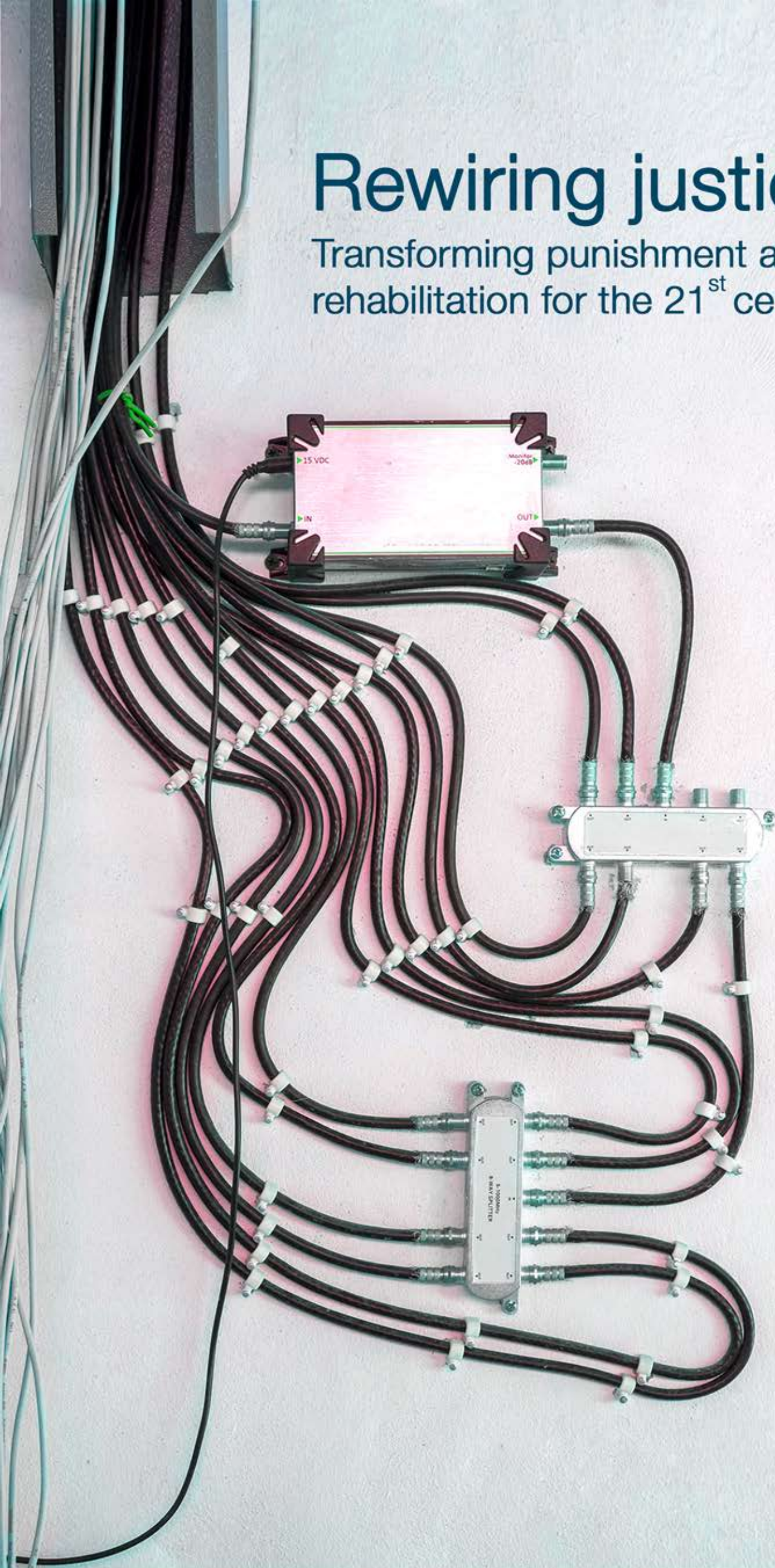


Rewiring justice

Transforming punishment and
rehabilitation for the 21st century



About Crest

Crest Advisory is an independent consultancy, specialising in criminal justice and policing. We provide analytical, policy and communications support to organisations who share our mission: building safer and stronger communities.

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Foreword

by Professor Nick Hardwick

When you are in a hole – stop digging.

There is a wide consensus that the justice system is in big trouble. Too many prisons are overcrowded and dysfunctional. Probation reforms are widely seen to have failed. Sentencing is opaque and not trusted. Community punishments are viewed with suspicion. Reoffending rates remain stubbornly high.

Yet too often reform seems based on outdated assumptions that fail to reflect how offending and offenders have changed. Offences have become more harmful and offenders have become more prolific. Many professionals in the system would recognise the picture this report paints despite their best efforts – reforms based on top-down process and structural changes that seem to see offenders as a monolith rather than individuals, and which fail to tackle the root causes of offending.

And I am sure that many members of the wider public, who on the whole have a balanced and practical view of how to reduce crime, are frustrated by a political and policy debate that poses punishment and rehabilitation as two mutually exclusive alternatives. As this report describes, they want both.

We are not going to fix this by simply doing more of the same thing: digging the same hole deeper. We need to do something different.

This report sets out what an alternative approach might look like, and gives some persuasive examples of where these different approaches have been tried. Like all the best ideas, some of these seem obvious when you think about them:

- Devolving responsibility and costs to a local level through PCCs – creating incentives to reduce the use of short-term custody and to create viable alternatives
- Using the opportunities this creates to integrate services – so that the complex and infinitely variable mix of problems and needs that individual offenders have can be met in a coherent way
- Putting the relationship between the offender and his/her supervisor or key worker at the heart of this work – in prisons and in the community, we know that it is these sorts of effective relationships where the professional has the time, expertise and access to other necessary services that can really make a difference

I know a little of the work of Tempus Novo, one of the organisations used as an example in this report. It exemplifies the change of approach required. It works with prisoners the system has often given up on, men in their 30s and 40s, often with a long record of offending but who have reached the point where they do want to change. Tempus Novo uses the powers of sustained relationships with the men it works with, and with potential small and medium sized employers to help ex-prisoners into secure employment. It's just one example – but it shows what can be done.

The report is right to call for more like this and is a powerful contribution to the debate and a powerful call for a new approach.

Acknowledgements

Crest Advisory thanks the Hadley Trust for its generous support of this project.

The authors would also like to thank all those who assisted with the case studies:

- Switchback
- Khulisa
- Safety Houses: “Utrecht het Veiligheidshuis”
- HMP Edinburgh
- Tempus Novo
- Durham PCC (Checkpoint)

We would also like to thank Revolving Doors Agency for conducting the focus groups.

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1. Executive summary

Our justice system is facing markedly different challenges to a decade ago. Crime is more harmful, offenders are more prolific and there is less money available. But the system has failed to adapt. Many of the assumptions underpinning how justice is delivered have remained unchanged for the last 100 years.

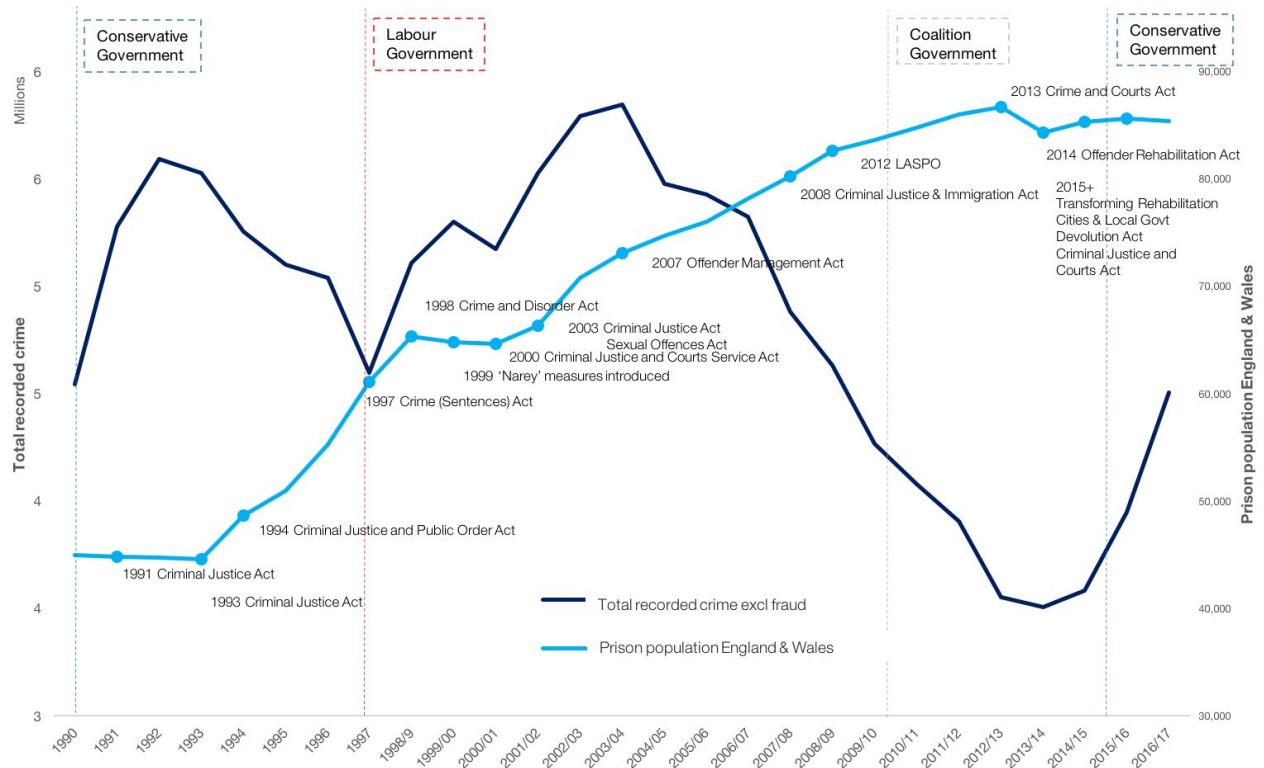
There are failures at every stage of the 'offender journey' through the system:

- Interventions reach offenders too late
- Punishment within the community is virtually non-existent, so prison is over-utilised
- Prisons are overcrowded and thus incapable of proper rehabilitation
- The social causes of crime and reoffending are neglected

There has been no shortage of 'reform' within criminal justice of late but most of these efforts have been doomed to failure. There are two principal reasons for this. Firstly, the reforms were based on flawed assumptions about how to change behaviour. Within the last 15 years alone, prisons and probation have faced two big structural reorganisations – the creation of the National Offender Management Service (NOMS) in 2004 and 'Transforming Rehabilitation' in 2014. While the reforms themselves were very different, they shared some key commonalities. In particular, both were based on outdated 'new public management' principles, which meant they prioritised processes over relationships, treated offenders as a monolith, rather than a group of diverse individuals, favoured off-the-shelf solutions over innovation, and most damagingly, failed to address the root causes of offending behaviour. Such approaches may work for 'transactional' services such as refuse collection or hip operations. But they are insufficient when managing offenders with complex and chaotic lives.

The second reason reforms have failed is because of an increasingly polarised political debate. For too long, the UK has been stuck in a stale argument between those in favour of a more liberal or welfare-oriented justice system (focused on rehabilitation) on the one hand, and those in favour of a more punitive system (emphasising punishment) on the other. This is a false choice. The solution is not to prioritise punishment or rehabilitation, but to combine both. Currently the system delivers neither objective.

25 years of Criminal Justice Reform



In this report, we draw on learning from other systems both in the UK and internationally, that are transforming themselves to deal with changing demands, in order to set out a new model for reform based on three key principles:

1. Devolving power to shift money upstream
2. Integrating services
3. Deepening relationships

These principles would lead to a very different set of policies, including:

- Giving Police and Crime Commissioners (PCCs) and directly elected mayors the power to co-commission offender management services locally and co-design innovative community sentences able to secure the confidence of the public
- Piloting the establishment of locally embedded, multi-agency 'prolific offending teams' (similar to the 'Youth Offending Team' model) overseen by Local Criminal Justice Boards
- Establishing a network of 'rehabilitation hubs' for male prolific offenders within police force areas, based on the 'women's centre' model
- Greater discretion for probation providers in determining the shape of post-sentence supervision to enable them to prioritise their resources efficiently, ensuring more young adult (18-25 year old) offenders are assigned a dedicated lead professional to manage their rehabilitation and resettlement
- A significant injection of funds into our justice system, with the creation of a new three year central government £100 million criminal justice transformation fund, and an

expansion of the ability of PCCs and Mayors to raise revenue locally via a 'crime and justice precept' (raising up to £180 million a year)

- Changing the incentives for judges with a new national presumption against the use of short custodial sentences (under 6 months) and overhauling community sentences with new minimum standards on intensity, swiftness, enforcement and transparency

We believe that taken together as a package, these reforms will end up generating significant cost savings (our modelling suggests the sentencing reforms alone will reduce costs by at least £29 million, potentially rising to £130 million). However, we do not pretend that in the short term they are cost neutral. There is a need for more honesty in the public policy debate: we are going to need to spend more money on our justice system in order to reap longer term dividends, paid for by an increase in central government and locally raised revenue.

Our overarching goal is a system which sets clear boundaries from the start, dealing swiftly with transgression to prevent escalation; where offenders can be robustly punished in the community in order to remove the pressure on prisons; where prisons become places of rehabilitation; and where services come together to address the root cause of offending, interrupting the cycle of crime. The policies we propose combine radicalism and pragmatism to forge an achievable vision for reform over the next parliaments.

2. Summary of recommendations

Recommendation 1: Give Police and Crime Commissioners and directly elected mayors the opportunity to bid for managing the cost of offenders sentenced to short custodial sentences (under 12 months).

Recommendation 2: Give PCCs and directly elected Mayors a role in co-designing the shape of locally commissioned probation services, including payment mechanisms, following the termination of TR contracts in 2020.

Recommendation 3: Incentivise PCCs to work with probation providers to co-design new innovative community sentences and greater flexibility in commissioning electronic monitoring.

Recommendation 4: Pilot the creation of locally embedded, multi-agency ‘prolific offending teams’ in four force areas (similar to the ‘YOT’ model), overseen by Local Criminal Justice Boards.

Recommendation 5: Pilot a network of ‘rehabilitation hubs’ for male prolific offenders within four police force areas, based on the ‘women’s centre’ model.

Recommendation 6: Reform post-sentence supervision arrangements so that probation providers are given greater discretion in prioritising resources - and enabling them to ensure more young adult offenders are assigned a dedicated lead professional to manage their resettlement for up to six months following sentence.

Recommendation 7: Publish a new prison and probation workforce strategy, including minimum standards on caseloads and staffing levels.

Recommendation 8: Create a new three-year £100 million criminal justice transformation fund, against which PCCs and Directly Elected Mayors could seek capital and revenue funding to support innovation and join up local services locally.

Recommendation 9: Expand revenue raising powers to enable PCCs and directly elected mayors to raise a new ‘Crime and Justice’ Precept.

Recommendation 10: Introduce a new national presumption against the use of custodial sentences less than six months, for non-serious offences.

Recommendation 11: Overhaul of community sentences to ensure new national minimum standards on swiftness, intensity, enforcement and transparency.

Recommendation 12: Pilot a new ‘swift and certain’ programme for punishing prolific offenders in the community.

Recommendation 13: Extend the power to undertake regular court reviews for prolific offenders serving short custodial sentences and/or community sentences to all magistrates' courts - by extending section 178 of the Criminal Justice Act 2003.

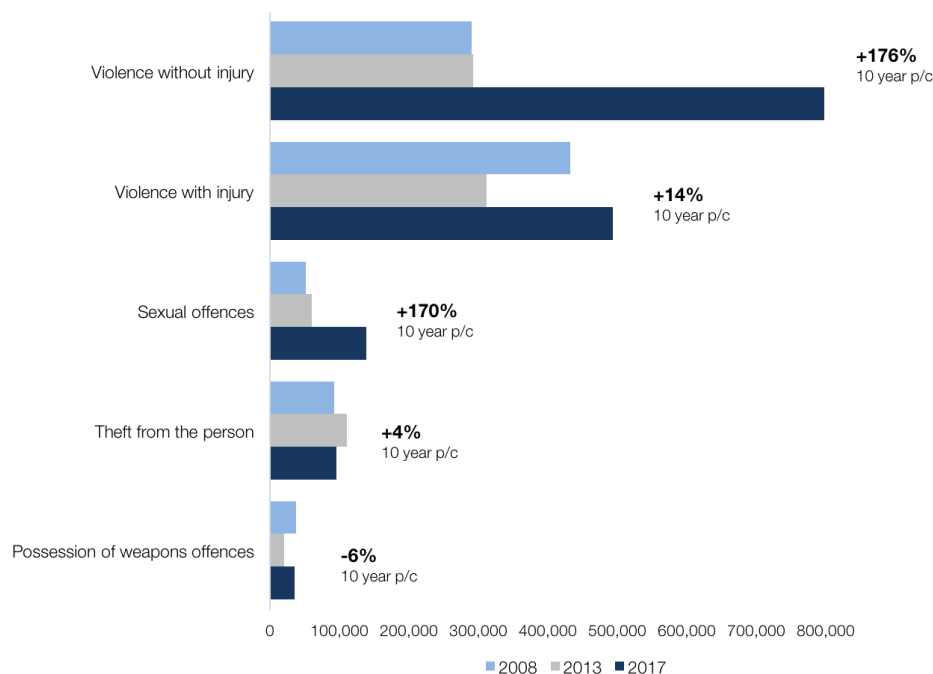
Recommendation 14: Amend the Homelessness Code of Guidance for Local Authorities to explicitly designate as 'vulnerable' any individual who is homeless upon completion of a custodial sentence.

3. The context

New challenges

The pressures facing the justice system have changed over the past decade. Firstly, there has been a growth in costly, high-harm crimes,¹ such as violence against the person and sexual offences.

Selected 'high harm'¹ recorded crime offences: volumes and % change between year ending Sept' 2008 & 2017²



For example, the number of recorded sexual offences, while still low as a proportion of total crime, have increased by 170% over the last decade.³ These types of offences typically take almost three times as long as more 'traditional' crimes to investigate and resolve: the mean time taken for a sexual offence to reach completion is 1,336 days.⁴

Secondly, the nature of offending has changed. As the cohort has shrunk, it has become more prolific. The proportion and number of offenders who are deemed 'prolific' (defined as having been convicted of at least 15 previous offences) have grown from 13% of all offenders in 2007 to 25% in 2017 across all offence types.⁵ This change becomes more drastic when only the more serious (indictable) offences are taken into account (see figure below.)

Total offenders cautioned/ sentenced for indictable (more serious) offences and proportion with 15 or more previous convictions or cautions⁶

¹ To give an indication of cost, the total economic and social costs of selected crimes to have been estimated by the Home Office and apply as follows: units cost for violence without injury, £5,930; violence with injury, £14,050; sexual offences, £6,520 (rape, £39,360); theft from the person, £1,380. See Home Office, The economic and social costs of crime Second edition, July 2018. Possession of weapons are not costed in estimates but, as with other crimes in the graph, are deemed 'high harm' based on the ONS Crime Severity Score Tool

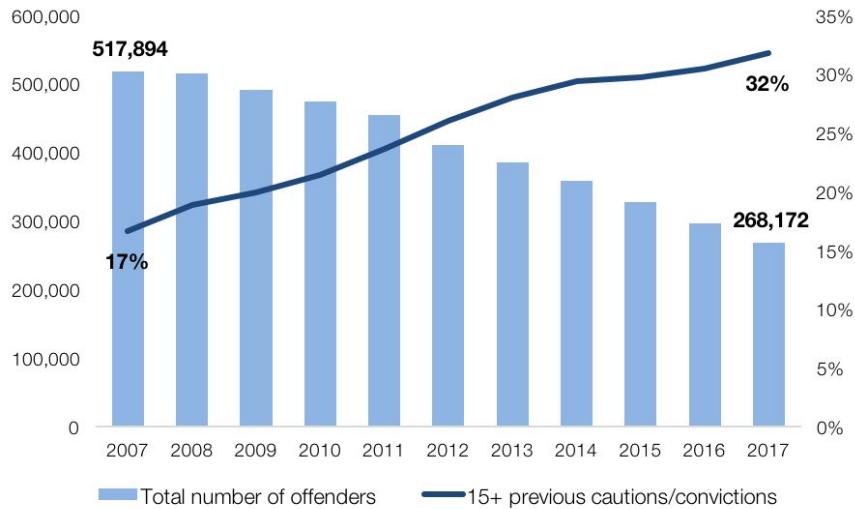
² ONS, crime statistics, year ending September 2017

³ Ibid

⁴ MoJ, Criminal court statistics (quarterly): October to December 2017

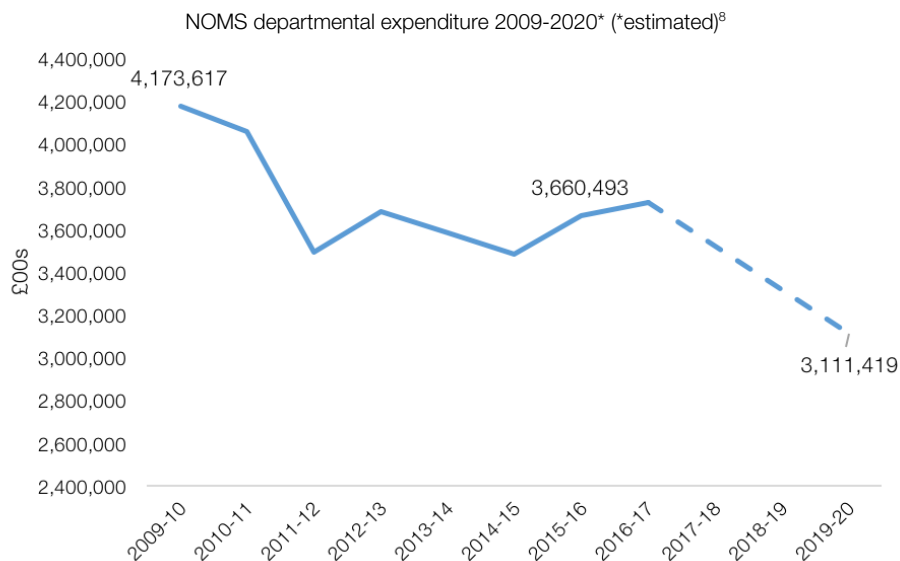
⁵ MoJ, Criminal Justice Statistics Quarterly: December 2017, figures are 12 months ending December and include offenders convicted for all offences (indictable, triable either way and summary)

⁶ MoJ, Criminal Justice Statistics Quarterly December 2017, Offending History Data Tool



These offenders ‘recycle’ in and out of the system. They generally have complex needs, facing multiple, overlapping issues such as homelessness, mental health issues and substance misuse. This leads to a vicious cycle, where imprisonment exacerbates the problems at the root of their offending.

At the same time, the fiscal squeeze on justice has tightened in recent years. The Ministry of Justice – one of the unprotected Whitehall Departments – has been at the sharp end of austerity, having seen its budget cut by a third since 2010 and set to fall further by 2020.⁷

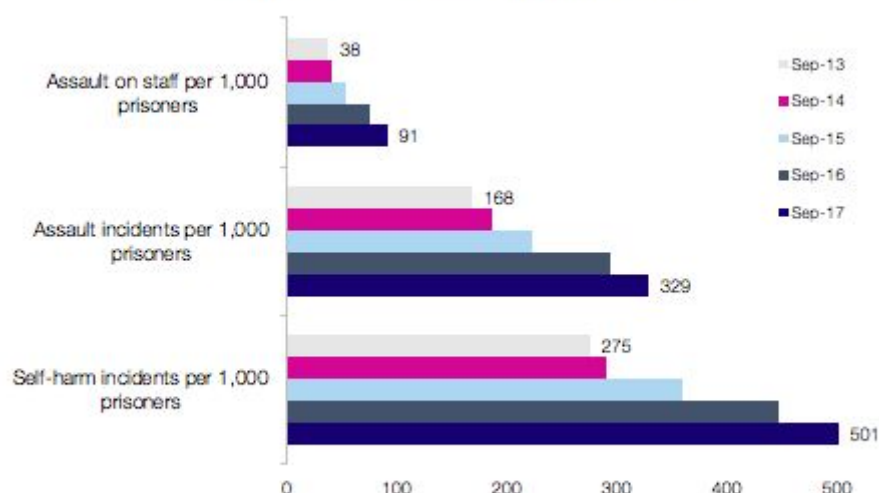


Initially, there were hopes that cutting the Justice budget would create a powerful financial incentive to reduce the size of the prison population, which had doubled in size under the previous New Labour government. Yet this is not how things played out. Since 2010, the prison population has remained relatively stable, though with an arguably more challenging cohort of prisoners and fewer staff available to deal with them. As a result, conditions inside prisons have worsened. In 2017 incidents of assault and self-harm within prisons reached record highs.

⁷ MoJ Annual Accounts, 2016/17; Parliamentary written answer, Dominic Raab, 16 November 2017

⁸ Based on Resource DEL, from MoJ Annual Accounts 2013/14 and 2016/17; estimated figures 2017-2020 based on 15% announced reduction to MoJ budget

Safety in custody over the past five years⁹



Meanwhile, growing doubts about the ability of the rehabilitation companies to effectively rehabilitate and resettle offenders post-sentence, including the scathing judgement by the probation inspectorate in 2017 that “most CRCs are struggling,”¹⁰ led to the announcement in July 2018 of a redesign of probation and CRC contracts. This redesign will lead to the termination of existing CRC contracts in 2020, rather than 2022 as originally planned.¹¹ Of the 15 CRC inspections carried out at the time of publication, all but one were deemed to either be failing to meet, or insufficiently meeting, expectations of the Inspectorate.¹²

A polarised political debate

Historically, justice ministers have faced public pressure to ensure that people who break the law are appropriately punished. Yet at the same time, governments are expected to address issues which require a greater emphasis on rehabilitation, such as prison capacity and the reduction of reoffending.

The Criminal Justice Act (2003) states that the purposes of sentencing are:¹³

- the punishment of offenders
- the reduction of crime (including its reduction by deterrence)
- the reform and rehabilitation of offenders
- the protection of the public
- the making of reparation by offenders to persons affected by their offences

The reality is that governments must balance these (often competing) priorities. Trade-offs are the bread and butter of politics, but justice policy has lacked a coherent framework that enables competing objectives to be weighted and the relative costs and benefits made transparent. This has had two important consequences.

⁹ MoJ, Safety in Custody statistics, year ending September 2017

¹⁰ HM Inspectorate of Probation - Annual Report, 2017

¹¹ See MoJ Press Release: www.gov.uk/government/news/justice-secretary-outlines-future-vision-for-probation

¹² These expectations fall into three categories, ability to: protect the public; reduce reoffending; ensure the offender abides by the sentence.

¹³ Criminal Justice Act 2003, Section 142 (Purposes of sentencing)

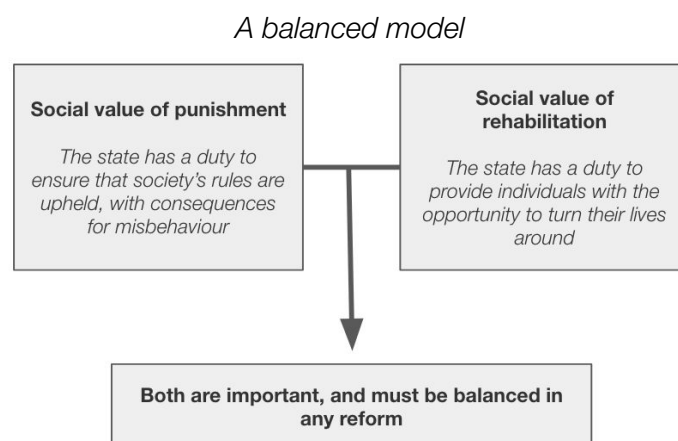
Firstly, it has led governments to overpromise and under deliver. Rather than provide transparency about the opportunities and constraints, the conflicting objectives and tough choices, successive governments have sought to reassure the public that offenders were being appropriately managed – even when it became obvious that they were not. Unsurprisingly, this has led to a deficit in public confidence – only 53% of respondents to the 2017 Crime Survey for England and Wales believe the criminal justice system as a whole is effective.¹⁴

Secondly, this tension has encouraged chronic short-termism, with governments tending to focus on policies that address symptoms rather than causes. For example, then-Justice Secretary Chris Grayling’s 2013 decision to restructure the probation service was based on the idea that providers would deliver better results on reoffending if they were incentivised by outcome-based payments, rather than being asked to respond to traditional targets imposed from the centre. Yet incentivising services in this way can only be a sticking plaster: the big levers for reducing reoffending lie outside of the criminal justice system – in housing, education and health.

Amidst all these competing imperatives, politics has become stuck deeper in a stale debate between two opposing pillars:

- Those in favour of a more liberal or welfare-oriented justice system (focused on rehabilitation)
- Those in favour of a more punitive justice system (emphasising punishment)

This is, and always has been, a false choice. The solution is not to prioritise punishment or rehabilitation, but to recognise that both have an important social value, and must therefore be carefully combined.

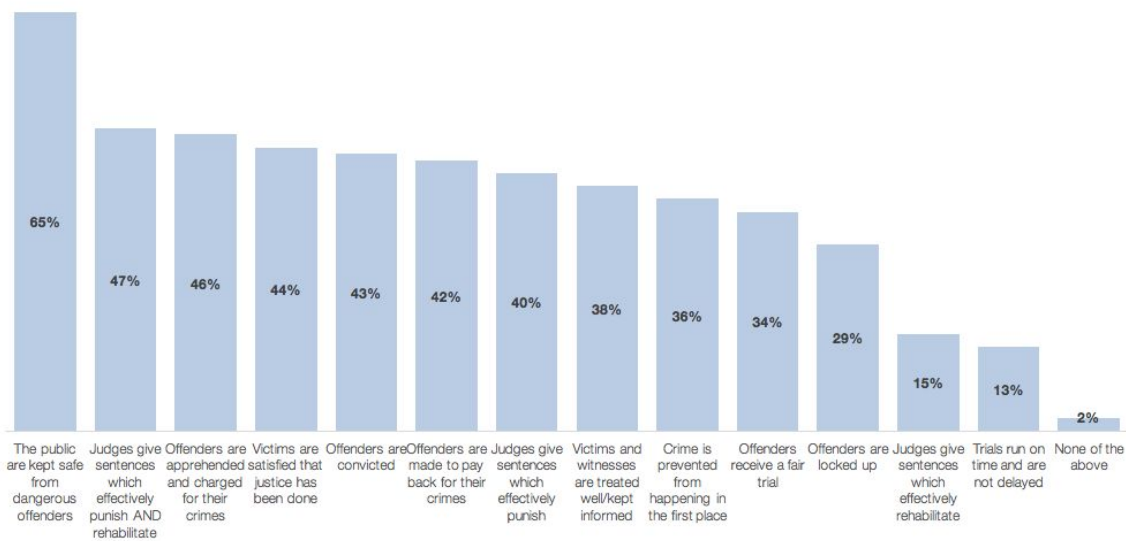


What the public think

The good news is that the balanced approach described above aligns with public opinion. Public attitudes towards criminal justice are often caricatured as highly punitive, restricting the ability of politicians to introduce more liberal measures. Yet a closer look at public opinion reveals most people are ‘balancers’ on criminal justice, rejecting the extremes on both sides of this debate.

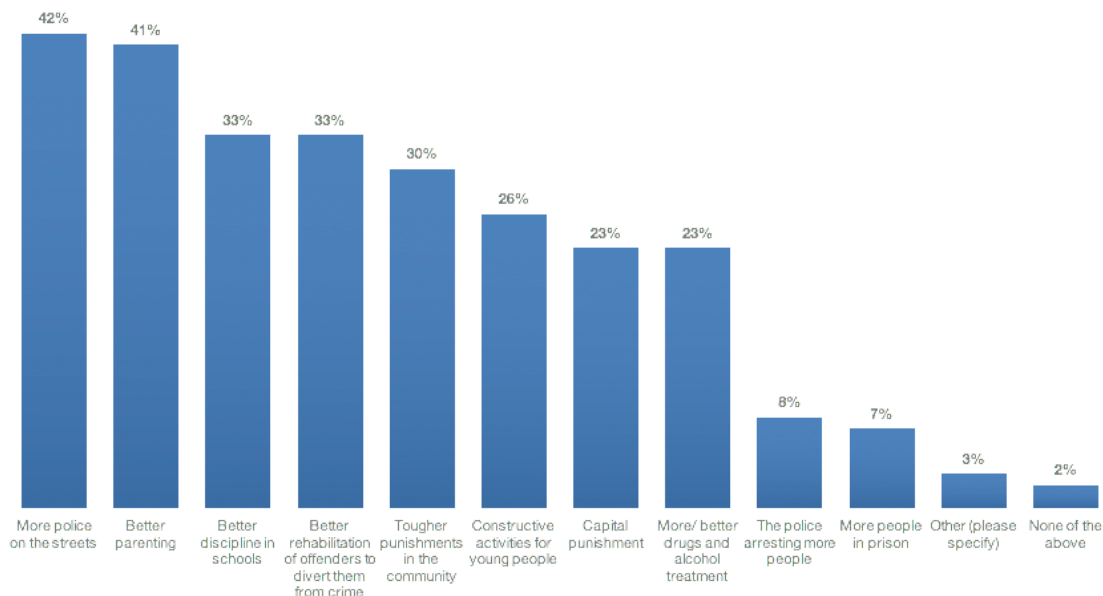
¹⁴ ONS, CSEW, year ending March 2017

Aspects of justice performance most important to the public (2017)¹⁵



Public polling carried out by Crest reveals that after keeping the public safe, ensuring that offenders are given sentences which both effectively punish *and* rehabilitate is deemed the most important aspect of justice performance (see graph above). Data also shows the public are neither in favour of locking people up for the sake of it, nor do they support policies which do not take into account the wider factors that influence offending - a high proportion of people think the best way to cut crime is through early intervention (for example, better parenting and better discipline in schools), and low numbers think prison and more arrests are the answer.

Public opinion on the most effective ways of cutting crime (2017)¹⁵



In line with public opinion, rather than seeking to choose between rehabilitation and punishment, the UK needs a model that combines both. Yet currently the system delivers neither objective.

¹⁵ Poll of the general public commissioned by Crest Advisory in 2017 via Opinium

4. Why government reforms have failed

In a 2014 IPPR paper on public service reform, Rick Muir outlined how a key driver of public service failure stems from government's inability to distinguish between 'tame' or 'simple' and 'complex' public policy problems.¹⁶ Tame problems are characterised by smaller numbers of linear causal relationships, while complex problems are characterised by multiple non-linear and interconnected causes that feed off one another in unpredictable ways.

In this distinction, 'tame' public policy problems could include how to improve basic levels of literacy and numeracy, or how to improve hip operations. Skill and expertise are needed to provide solutions to these problems, but there is a high likelihood of success if processes that have proven successful elsewhere to tackle these issues are reproduced and scaled up.

Examples of 'complex' policy problems, on the other hand, include how to reduce demand on public services from individuals with multiple overlapping problems, including those with complex health needs, those not in education, employment or training (NEET) and those who reoffend. All of these problems have multiple causes (such as mental illness, drug addiction, homelessness) that interact with one another in ways that vary wildly from individual to individual. Standardised approaches are unlikely to work, and in-depth knowledge of personal circumstances is required.

Traditional models of criminal justice reform

Over the last 25 years, reforms to the criminal justice system have been based around two core models for organising services:

1. Centrally imposed targets
2. Outsourcing of services

The strengths and limitations of both models are described below.

Centrally imposed targets

Under the centralised-targets model, national experts determine a unified policy approach. Local staff then implement their decisions following detailed plans handed down from above. The growing popularity of 'new public management' approaches during the 2000s – which saw the introduction of more rigorous regimes of performance management – entrenched this centralised model of delivery within criminal justice.

The targets model has strengths. In particular, it is well suited to so-called 'tame' public policy problems, where there is already a strong body of evidence regarding what works; the task of government is to make sure that more people follow the same formula. For example, standardised approaches to reducing NHS waiting times have been shown to be effective. This is a tame problem as several factors, such as capacity, have a direct causal relationship with waiting time duration. Replicable interventions have thus proven effective, including increasing staff levels, bringing in external capacity and prioritising critical cases. The results of centralised policy on NHS wait times in England, introduced in 2004, were impressive: by 2010, 93% of

¹⁶ IPPR, 2014, see: https://www.ippr.org/files/images/media/files/publication/2014/02/Many-to-many_Feb2014_11865.pdf

admitted patients and 97% of non-admitted patients were treated within 18 weeks (which was the referral to treatment target).

However, the imposition of central targets can also produce unintended effects. For one, targets tend to encourage 'gaming.' In 2004, the New Labour government instructed the police to focus on bringing a specific number of offences to justice. This incentivised them to prioritise 'easy wins,' such as sanctioning young people for possessing small quantities of drugs, rather than more serious crimes. In turn, this drove up the numbers of young people drawn into the criminal justice system and the offending cycle.

Case study: the 'offenders brought to justice target'

In April 2004, a public service agreement target went into effect to increase the number of "Offences Brought to Justice" (OBTJ) across police forces. This target did not distinguish among the types of offences brought to justice, nor did it distinguish among disposals. An offence brought to justice using a caution counted toward the target just as if it had been tried in court, except at significantly less time and cost. Many argued that this target created a perverse incentive for criminal justice agencies, and it coincided with a significant jump in the numbers of young people being sentenced to custody. The proportion of offences disposed of out of court rose from 23% in 2003 to 43% in 2007. The target was scrapped in April 2008, after which the use of out of court disposals began to fall rapidly.

Another problem with targets is that they encourage generic approaches which can stifle innovation. Providers look upwards to central government rather than responding to local needs and circumstances. An example of this can be found in the creation of the National Offender Management Service (NOMS), which was established to break the silo between prisons and probation, but ended up demoralising front-line staff and reducing the level of personalisation within the system.

Case study: the creation of NOMS

The creation of a new 'National Offender Management Service' (NOMS) in 2004 was intended to break down 'silos' between prisons and probation by bringing them under the control of a unified organisation. By creating a single end-to-end offender management service, providers would also be able to improve outcomes and develop interventions based on the offender rather than the offence. However, a lack of clear structure or framework meant it was unclear who held ultimate responsibility for the probation and prison service. A lack of planning meant that there was no clarity over the aim of imprisonment or the purpose of the criminal justice system in general.

Prison staff were not adequately trained in skills such as motivational interviewing, which were essential for the offender supervisor roles introduced in prisons. Offender supervisors in prisons were often delegated large and unmanageable caseloads, leaving them with insufficient time to attend to the prisoners under their charge.

The creation of NOMS did not achieve its aim of seamless end-to-end management of offenders. All in all, staff was left demoralised, with 'rehabilitation' feeling like a tick-box exercise to meet external targets and no real focus on tangible offender outcomes.

Ultimately, there are two reasons why top-down targets are not effective at tackling complex problems. First, where problems have non-linear causal relationships, standardised approaches are less likely to be effective. It should go without saying that there is no standard approach to preventing reoffending that can be 'scaled up' or rolled out nationally. Each case needs to be approached individually; no single lever can be pulled to deliver success in all cases.

Second, top-down targets ignore the interconnectedness inherent in complex problems – that is, problems with causes that cut across departmental silos. Reducing the number of prolific offenders requires not just efforts within criminal justice, but collaboration involving education, training, mental health, drugs treatment and housing services. For the complex problems affecting the criminal justice system, centrally-imposed targeting proved to be costly and unresponsive. In recent years, this realisation has driven the government to explore other possibilities.

Outsourcing of services

Successive governments over the past decade have sought to open the criminal justice system to greater competition and choice. This is based on the theory that market-based systems are more efficient, since providers of services are forced to compete to attract customers, driving up quality.

Within the criminal justice system, markets have been introduced in the probation and prisons service in a more limited form. Instead of creating consumer choice between different providers (which for obvious reasons would be inappropriate given the 'users' in this context), commissioners contract services out to external providers by choosing between competitive bids.

This example illustrates several of the problems inherent in using market-based mechanisms in the criminal justice system. Markets aim to maximise 'utility' for the consumer, but in the case of the justice system, there is little clarity on what constitutes 'utility' or the 'consumer' in the transaction. In a market model, is the consumer of prison services the government footing the bill? Is it the service-user (the offender)? Or is it the broader society which prisons help protect? And what interests, or 'utility', is the market optimising? Is it lowering costs, lowering imprisonment, reducing offending, or providing rehabilitation? A single market cannot optimise all values for all consumers. Put simply, the justice 'transaction' is too complex for free market regulation.

Market-based mechanisms are effective at optimising specific outcomes for specific consumers. For example, they can help drive down costs for public agencies because the private sector can benefit from economies of scale and centralise back office functions. The introduction of compulsory competitive tendering in local government in 1988 reduced costs by about 20% on average in the first year (though there is little evidence that it improved quality). Private sector businesses also tend to be an early adopter of new technologies. For example, many emergency services have outsourced their emergency 999 call centres. In May 2017, the West Midlands Fire Service, in collaboration with Capita, became the first emergency service to trial 999eye, which allows callers to live stream their 999 call via their smartphone, giving emergency services 'on-scene eyes'.

Ultimately though, market-based models of delivery suffer from the same two problems as targets-based ones: they struggle with complex non-linear relationships and they often serve to fragment systems – whereas greater *connectedness* is required to tackle complex problems.

The assumption of linear relationships that lies behind neoclassical economics comes from the idea that individuals are generally rational and self-interested actors. But this does not reflect the messy reality of people's lives. Offenders who find themselves in prison, by definition, acted irrationally when they decided to offend. More broadly, the very act of constructing payment systems to incentivise good performance often leads to a prioritising of processes over outcomes.

Case study: 'Transforming Rehabilitation' and the splitting of probation

The breaking up of the probation service introduced by then-Justice Minister Chris Grayling in 2014 (under the banner of 'Transforming Rehabilitation') was intended to improve performance by sharpening financial incentives and introducing contestability into the system.

As with the Work Programme (the payment-for-results welfare-to-work programme introduced by the UK government in 2011), the idea was that providers would be paid at least partly 'by results,' which in this case meant their success in preventing reconvictions. With case management delegated to the private CRCs, a slimmed-down National Probation Service (NPS) was tasked with risk assessment, court advice, advice to the Parole Board, allocation of all offenders on community sentences, sentence enforcement and supervision, and the management of high-risk offenders.

There are a number of reasons the Transforming Rehabilitation reforms were doomed to fail from the beginning. First, they fragmented services between a public probation service, which retains various enforcement functions, and contracted-out providers which have responsibility for the case management of most offenders. This has inhibited information-sharing between the different local agencies. For example, the various IT systems used by the NPS were incompatible with the CRC system. As a result, NPS court staff would often have to advise the courts with insufficient information.

Second, the commissioning process and structure of the contracts appear to have restricted rather than encouraged competition and innovation (supposedly the key aim of the reforms). The CRC contracts were originally set-up as 'black box' contracts almost entirely centred around reoffending rates, and centred around with national standards for delivery and training no longer enforced. This set-up was intended to promote flexibility and innovation, so that the staff and providers could decide how they wanted to deliver services, provided they met their reoffending outcomes. However, concerns have been raised regarding the probation practice and operation models permitted as a result of the CRC contracts' flexibility and lack of specified basic standards: for example, widespread supervision over telephone as opposed to face-to-face contact, and a tendency towards group activities rather than individualised services

Third, the current system fails to acknowledge that providers lack influence over most of the factors that affect whether or not somebody reoffends (which include their family life, employment status, health and housing situation). Contracting out service silos on a national basis, as with the Work Programme, has arguably undermined the ability of local providers to

integrate and coordinate provision around the individual user, which is essential for tackling complex problems like reoffending.

Furthermore, market-based mechanisms arguably undermine system-wide collaboration, by fragmenting the justice system into competing, autonomous providers. ‘Contracting out’ tends to fragment provision into separate contractual arrangements, inhibiting coordination and integration. This means they struggle to tackle problems that transcend the scope of the narrowly-defined ‘market’.

Traditional models of reform¹⁷

	Targets	Markets	The criminal justice system
Theory of change	Outcomes best achieved by rolling out technocratic plans from the top down	Outcomes achieved through greater choice and contestability	Outcomes cannot be directly planned; reoffending has multiple, nonlinear causes
Methods	Behaviour incentivised by top-down performance targets; services are delivered ‘to’ users	Services are contracted out to external providers; interaction with users is transactional	Systems that are siloed and centrally managed cannot manage complexity; to do so, services must prioritise relationships over processes
Relevant problems	‘Tame’ problems, where we know what works and the challenge is to scale up/ transfer, e.g. hip operations	‘Tame’ problems where providers and consumers respond to market incentives, e.g. refuse collection	‘Complex’ problems where no standard strategy or market incentive can be relied upon to achieve an outcome

Missed opportunities

The implications of these failures are not just theoretical - they have had a tangible effect on the lives of offenders and victims. Below, we show how these reforms have contributed to a series of missed opportunities at every stage of the ‘offender journey’.

Prevention and diversion

The offending behavior of serial offenders generally escalates to become more serious and frequent over time, with prolific offenders typically starting their criminal career with minor offences such as theft (often shoplifting) or summary offences. (For example, 45% of prolific offenders committed a theft offence as their first offence, compared to 21% of non-prolific offenders who started with the same offence type.¹⁸)

There is strong evidence that diverting first-time offenders away from the criminal justice system into a personalised intervention can reduce their chances of offending down the line. In particular, youth diversion schemes, which delay the point at which a young offender is formally

¹⁷ Adapted from Muir, ‘Many to many: the relational state’, IPPR, 2014

¹⁸ Prolific Offenders - Characteristics of Prolific Offenders:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/681553/prolific-offenders-15-feb-2017.pdf

processed through the CJS, can be effective at reducing re-offending rates.¹⁹ Less research is available on adult offender diversion programmes, (encouraging results from a deferred prosecution scheme in Durham will be explored later in this report), but adult data on out of court disposals have demonstrated reduced reoffending compared with those who go to court.

²⁰

However, decisions about the extent and nature of diversion are usually made in isolation, by the police, and tend to be divorced from any broader strategy to address the root causes of crime and the use of out of court disposals varies considerably across force areas.

Out of court disposals

A wide range of out of court disposals exists for adults: community resolutions, simple or conditional cautions, drug warnings or penalty notice disorders (PNDs or spot fines). Out of court disposals can provide a quicker, simpler and more proportionate alternative to prosecutions for minor, nuisance offences, allowing the police to concentrate on serious crime.

Despite these supposed advantages, the use of court disposals has decreased significantly in recent years, putting unnecessary strain on already over-stretched courts. In 2017, nearly 900,000 (75%) of the 1.2m sentences handed out across all courts constituted a fine. Forty-one percent of these fines were issued for a non-motoring summary offence (as opposed to an either way or indictable offence), and 55% were issued for motoring summary offences. Many of these cases could have been diverted and dealt with (at significantly lower cost, given the average cost of a summary trial at a magistrates' court is £775)²¹ outside of court, particularly for the first time offenders included in the figure.

There is little available research on the efficacy of PNDs or court issued fines in reducing crime. What is clear however, is that neither option addresses issues such as substance misuse, mental illness or poverty, which contribute to many summary offences. Of 28,233 PNDs issued as out of court disposals in 2017, 40% were issued for being drunk and disorderly, which was by far the most common offence type. Furthermore, only around 50% of PNDs issued end up being paid.

Research on out of court disposals has found that reoffending rates are lowest when disposals are combined with restorative justice approaches, such as apologising to the victim or paying compensation.

The government intends to replace the existing confusing range of disposal options with just two - a community resolution and conditional caution - and three police forces have been piloting the two tier system. It is hoped that simplifying out of court disposals will encourage an increase in their use. A review of the pilot concluded that restorative justice should be recognised as one of the approaches that the police can use to show local communities that a crime has been solved.

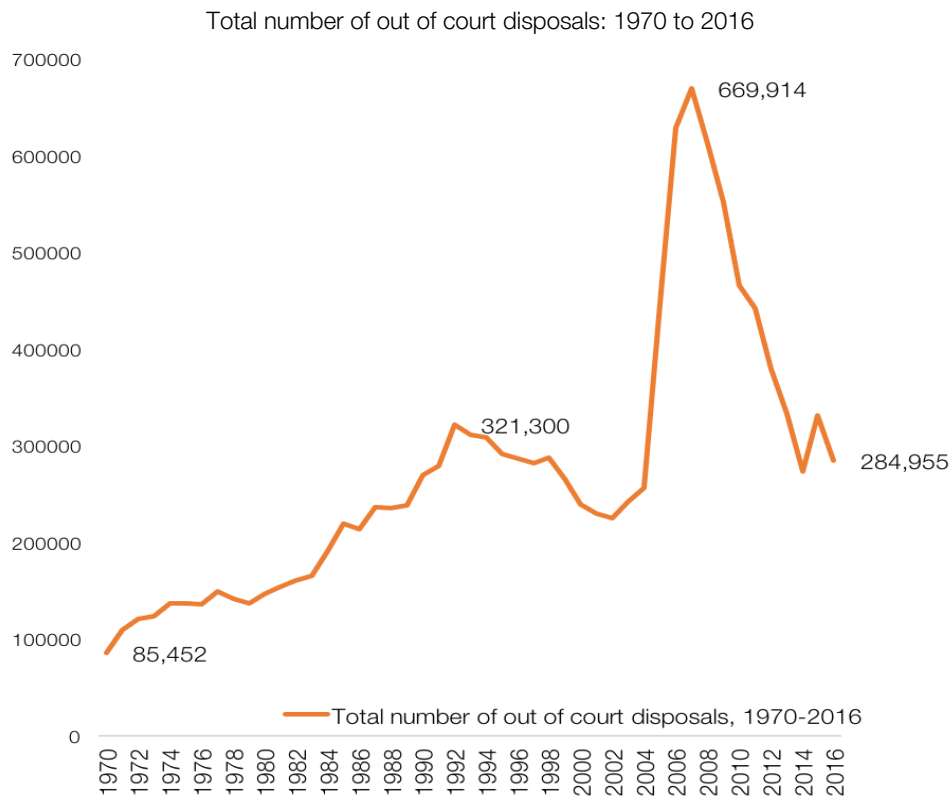
Across the country, recent years have seen a steady decline in the use of out of court disposals. The proportion of offenders who were cautioned has fallen from 30% to 13% over the last ten years. More than half of first time offenders now go to court rather than receive a

¹⁹ <http://justiceinnovation.org/portfolio/what-is-youth-diversion/>

²⁰ http://www.transformjustice.org.uk/wp-content/uploads/2017/12/November2017_Less-is-more.pdf

²¹ <https://www.cps.gov.uk/legal-guidance/costs-annex-1>

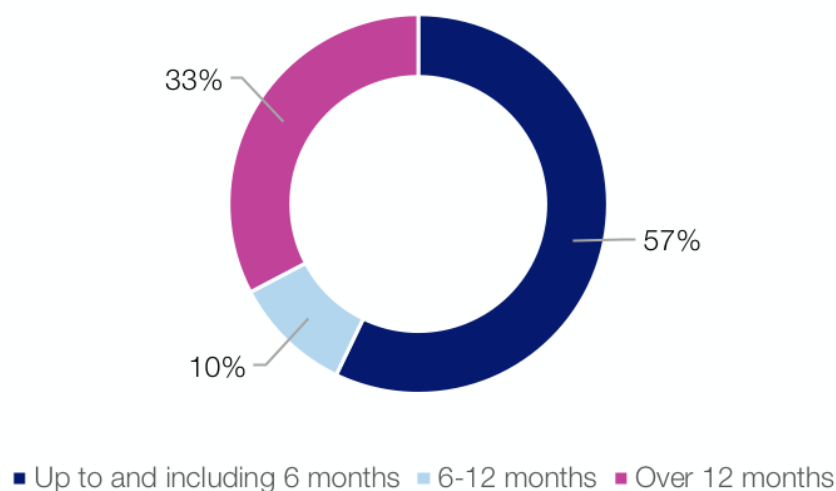
caution, compared to one-in-five 10 years ago. As a result, in many areas low-level offending is tolerated, rather than dealt with, and opportunities are missed to nip offending in the bud before it spirals out of control.



Sentencing

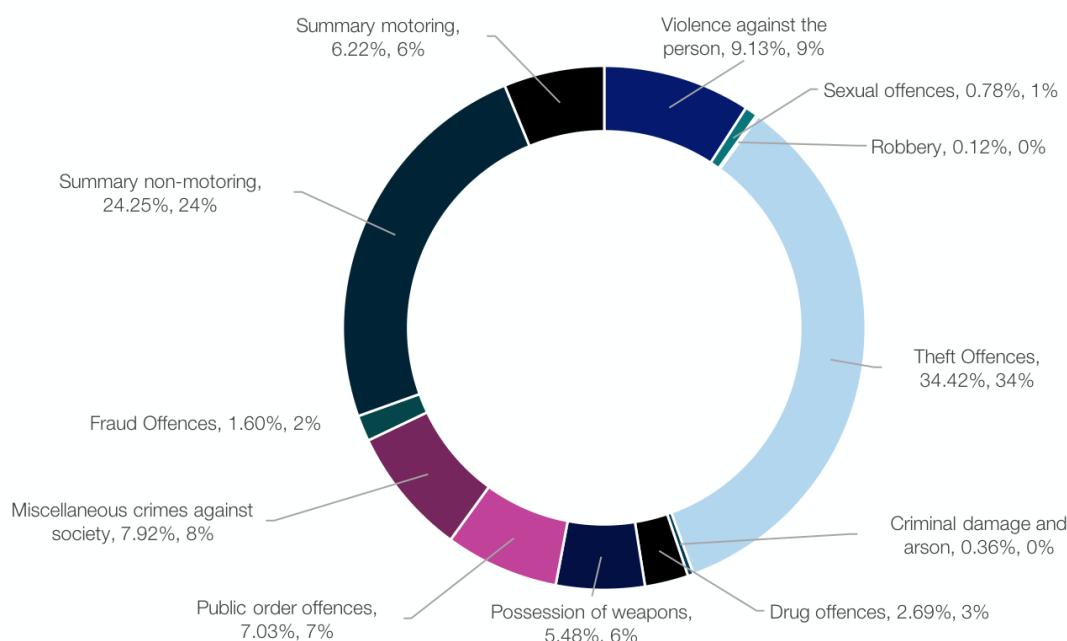
There is a strong body of evidence that short custodial sentences (less than 12 months) do not work – either as a means of punishment or rehabilitation. To paraphrase one participant who took part in Crest’s offender focus group, commissioned for this project (see chapter 5), such sentences are long enough to deprive an offender of their job, housing, and family ties, but too short to offer the chance of fixing the problem which gave rise to their offending. Nonetheless, the majority of sentences handed out by the courts continue to be under 12 months.

Proportion of short (<6 months and 6-12 months) and long (>12 months) custodial sentence lengths (2018)²²



Analysis of sentencing data (2017) reveals that over three quarters of short custodial sentences (<6 months) are handed out for non-serious offences (i.e. excluding violence against the person, sexual offences, robbery, and possession of weapons) with the majority handed out for summary and theft offences.

Breakdown of short custodial sentences (<6 months) by offence type in 2017²³



It is important to note that this is not due to any failure on the part of the judiciary. Magistrates broadly recognise the problems with short custodial sentences. Their reliance on short sentences in spite of the evidence against them fundamentally reflects a lack of confidence in alternatives to custody. Previous research by Crest shows that over a third of magistrates are

²² Criminal Justice Statistics - Quarterly update. Table Q5.4: Persons sentenced at all courts to immediate custody, for all offences and for indictable offences, by length of sentence, 12 months ending March 2008 to 12 months ending March 2018

²³ Criminal Justice System Statistics publication: Sentencing: Pivot Table Analytical Tool for England and Wales

not confident in community sentences.²⁴ In 2017, our survey of magistrates revealed that over a third of magistrates (37%) are not confident that community sentences are an effective alternative to custody and two thirds (65%) are not confident they reduce or deter crime.²⁵

Moreover, many of those given short custodial sentences will have been up in front of the court multiple times, having served previous sentences in the community, leaving the judges with little alternative. Data on prolific offenders²⁶ exemplifies the extent of this failure - a third of prolific offenders receive some sort of custodial sentence (i.e. immediate custody and suspended sentence) compared to a tenth of non-prolific offenders. Furthermore, despite forming less than 10% of the offending population, prolific offenders have been to prison more times than all other offenders combined (see table below).

Percentage of sanctions by disposal type as a function of the whole criminal career²⁷

Disposal Type	Prolific Offenders	Non-Prolific Offenders
Caution	7.7%	33.4%
Absolute discharge	0.7%	0.3%
Conditional discharge	10.0%	9.2%
Fine	21.7%	26.2%
Community sentence	25.3%	16.6%
Suspended sentence	4.0%	3.3%
Immediate custody	23.9%	7.9%
Other	6.8%	3.0%

The crisis in sentencing in England and Wales is the inevitable result of an overly centralised system which disincentivises the commissioning of innovative alternative sentences. And innovative alternatives indeed exist. To cite one example, advances in electronic tagging technology permit authorities to restrict an offender's ability to associate in certain places, at certain times of day. Research from the USA (where electronic monitoring is routinely used in the criminal justice system) has consistently demonstrated a reduction in reoffending rates as a result of electronic monitoring. Moreover, research on its cost effectiveness suggests that electronic monitoring is five to six times cheaper than prison. Taking these findings together, electronic monitoring potentially offers a more effective alternative to prison in terms of cost, recidivism and public protection for low-level offenders. Yet the electronic monitoring programme procured by the UK government is already five years overdue, with the government having written off £60 million. As a result, the numbers of offenders subjected to electronic monitoring is falling, despite the technology's strong results.

²⁴ Crest, 2017, Community sentences: where did it all go wrong?

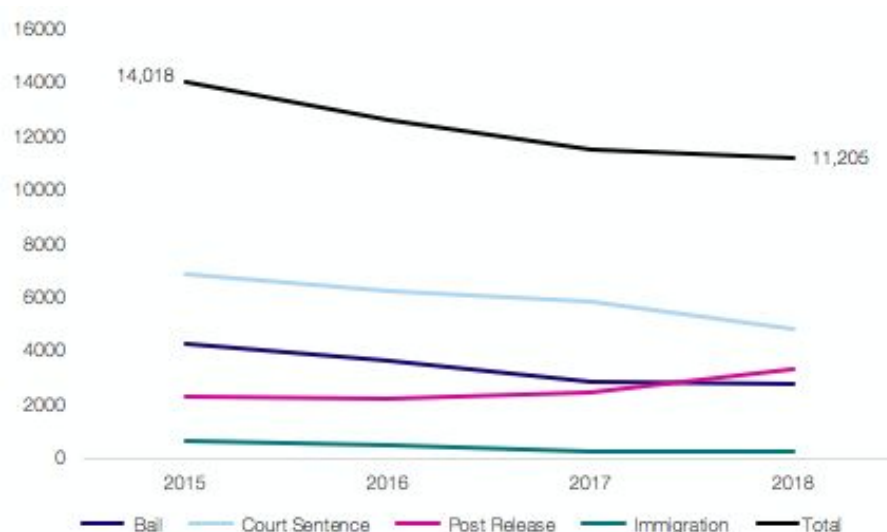
²⁵ Our survey, carried out by the Magistrates Association, surveyed 582 magistrates in England and Wales

²⁶ Prolific Offenders - Characteristics of Prolific Offenders:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/681553/prolific-offenders-15-feb-2017.pdf

²⁷ Ibid

Overall number of subjects with an active electronic monitoring order, by order type, as at 31 March 2015 to 31 March 2018²⁸



Effective innovation also requires more local input in disposals: local leaders are best placed to understand what kinds of sentences are appropriate for the cohort of offenders coming before the court. Yet there is little financial incentive for local areas to invest in innovative alternatives. They do not pick up the tab for locking people up, and thus see none of the direct financial benefits of a reduction in incarceration. Instead of providing local authorities with incentives to engage, the system lumbers along treating offenders as a homogeneous bloc, rather than a diverse group with differing and complex needs.

Resettlement

Today, there is substantial, high-quality research ongoing into how best to address criminal behaviour. This work should inform the way offenders are resettled and reintegrated back into the community post-sentence. For example, numerous studies have demonstrated the importance of positive, stable and personalised relationships between offender and caseworker in opening a path out of the cycle of crime.^{29,30} The Ministry of Justice's Offender Management Community Cohort Study showed that 30% of offenders who said they had an 'excellent' relationship with their offender manager reoffended, compared with 40% who said their relationship was 'not very good' or 'bad'. Poor experiences in this key relationship may even increase the likelihood of reoffending.

Yet at all points across the justice system, relationships are deprioritised in favour of fixed processes and transactions. Prolific offenders are assessed multiple times, handed from pillar to post between agencies with increasingly unmanageable caseloads. Without the basic continuity, knowledge, and trust that comes with a stable relationship, it is nearly impossible to design or implement a resettlement plan that can address the complex needs of the offender.

²⁸ Annual HM Prison and Probation Service digest: 2017 to 2018. Table 12.1: Monitored electronic monitoring subjects by order type, England and Wales, as at 31 March 2015 to 31 March 2018

²⁹ Burnett, R. & McNeill, F. (2005). The place of the officer-offender relationship in assisting offenders to desist from crime, *Probation Journal*, 52(3), 221-242.

³⁰ Farrall, S. (2002). *Rethinking what works with offenders*, Willan Publishing: Cullompton, Devon

Similarly, the evidence is clear that community based supervision is most effective when integrated with mainstream services such as housing, skills development, and drug treatment.³¹ However, resettlement services are delivered in silos rather than integrated, leaving probation companies without access to many of the levers required to reduce prolific offending. For example, probation companies often lack up-to-date information on local social housing initiatives and job schemes. At a more basic level, probation officers struggle to gain access to offenders pre-release, thanks to a combination of overcrowding in prisons and poor information sharing between the prison service, split probation service and local authorities.

Summary

Recent reforms to criminal justice in England and Wales were fundamentally misconceived:

- They prioritised processes over relationships
- They treated offenders as a homogeneous unit, rather than a diverse group
- They fragmented systems and introduced new service silos
- They isolated the criminal justice system from other public services better placed to address the root causes of crime

To put it bluntly, the criminal justice system is poorly equipped to punish and rehabilitate offenders. The following chapter looks at justice through the other end of the telescope, exploring the perspectives the people who use those services - the offenders themselves.

³¹ Farrall, S., & Calverley, A. (2006). *Understanding desistance from crime*, *Crime and Justice Series*, Open University Press: London

5. The perspective of service users

Service user involvement has been central to policy development in areas such as health and welfare, yet it has been relatively overlooked in the criminal justice system. While some progress is being made to narrow the gap – for example, through the work of groups like prison councils, User Voice,³² Revolving Doors Agency and others – attempts to involve service users in the design and delivery of the criminal justice system in England and Wales have been patchy.

To build a greater understanding of user experiences, Crest commissioned Revolving Doors Agency to conduct two focus groups which included men ($n=7$) and women ($n=6$) with a variety of recent experience of the criminal justice system, including custodial sentences, community sentences, and supervision by probation services. Focus groups were co-facilitated by people with lived experience and researchers. We asked the participants about their experience of the criminal justice system and interactions with criminal justice staff, and for their opinion on how the criminal justice system could be improved.

Findings

Three major themes were identified in the data, namely:

1. Meaningful and effective community sentences
2. Relationships with criminal justice system staff
3. Broader criminal justice system issues

Each theme is explored below and illustrated with relevant quotes from the participants.

1. Meaningful, effective community sentences

The participants in both focus groups discussed what made a community sentence effective, and what they had found to be ineffective. Time and again, participants returned to the vital importance of community sentences that were meaningful and not solely punitive:

“My experience of just putting a fluorescent jacket on someone and embarrassing them like on the streets is just not going to be effective at all.”

Participants differed on what constitutes the most ‘meaningful’ kind of community sentence. The majority cited work-based sentences, especially when those sentences offered a path to permanent employment (for example, after completing a litter-picking community sentence, one participant had been employed by the council), or allowed participants to develop their job skills and experience. For others, ‘meaningful’ sentences were those relevant to their existing strengths and interests, as they were more likely to resonate with the individual:

“I think somebody should at least look into what this individual is experiencing, this guy’s a bricklayer and he has been for 20 years – well then why am I going to put him doing litter picking? So it should be something that makes the most of his skills.”

³² <http://www.uservice.org/about-us/our-services/consultations/involving-service-users-in-probation/>

The majority of participants agreed that the most effective community sentences were those which let them give back to the community and witness the impact of their work first-hand. This dual benefit to both offender and community was suggested as a benchmark for more meaningful community sentences:

“Giving back to the community... that’s to me what good looks like. You know, that you’ve done something and you’re paying back to the community. That’s good, so like you said it’s a win-win thing. That’s what I think good looks like.”

This idea of ‘giving back’ was a recurring theme in the data. In particular, it was often said that helping others made for more meaningful, positive and effective community sentences. These types of activities were described as boosting the offenders’ confidence, self-worth and self-esteem compared to community sentences with a solely punitive focus:

“I think mentoring and the volunteering and that’s most of us, helping other people helps you stay well as well, so it works. It gives you your self-esteem back, it gives you a purpose... It’s good to do the right thing sometimes.”

“It has an impact on the community, it also has an impact on the person who’s committed the crime, whatever their crime is, you know. Because basically what we want to do is rehabilitate people, and if you can find a positive way in doing that then you prevent them from going back.”

For other participants, particularly women, community sentences that target wellbeing (as opposed to training or education) were considered most effective:

“I have been on many probation services and I could lie my way through all of them, you know. But once I was put in one that dealt with wellbeing, you can’t hide from yourself, do you know what I mean? It’s more real, it’s more truth.”

Participants discussed how despite the fact many offenders and ex-offenders struggle to deal with trauma, there remains a dire unmet need for trauma-informed psychological support. Trauma therapy was proposed as a potential component of effective community sentences:

“[Offenders] need to have trauma therapy and I think those things need to be put in place for them. And then, once they’ve been doing that for a while, then maybe say to them, alright, okay, well then now, you’ll go and work in the community. That sort of thing. It’s a process.”

Though the participants described wide variation in the effectiveness of community sentences they had completed, they agreed that community sentences were more effective than custodial sentences, particularly short prison sentences:

“[Getting] sent to prison for a short amount of time as well, it can mess up your flat, your kids, everything.”

When asked what factors impacted the effectiveness of community sentences, participants highlighted the timing of sentences and the use of incentives. In terms of timing, participants suggested that community sentences were less effective when imposed immediately upon release from prison:

“This course, while it’s a good idea, it’s kind of – I don’t know, they just spring it on you and you’ve just come out of prison and you finally meet your probation officer. You have your five-minute quick checklist interview and then you actually talk to her and then it’s like, ‘Oh, you’ve got to go on a course now.’ You just think maybe the timing of the course, it’s rather important.”

Some of the focus group participants made the suggestion of community sentences becoming more reward- or incentive-based, saying that interventions were more effective when they gave offenders a sense of achievement and progress:

“So I was there for like six months and they set, like, pattern goals, so you always get rewarded for your achievements. Do you understand me? So that makes you feel like, oh, I’m doing really well now because I’m achieving something all the time.”

An overarching theme of the participants’ discussions was that community sentences were considered more meaningful and effective when they felt they were being given opportunities to make a positive change in their lives:

“It might just get you work-orientated in your brain. Do you know what I mean? I’m going there getting help with my alcohol. Getting help with my drugs. I could actually do this. I’ve got a chance here. Someone’s actually seeing something in me that I’ve not seen in myself for a long time. So, yeah. It might spark something off in you individually.”

Some participants suggested that, ideally, offenders should be offered a choice of community sentences, so they could select the interventions which would be most meaningful on an individual basis. This could also boost their motivation and commitment to the sentence:

“Give them a choice, don’t just say that’s what you’re going to do. Find something that they actually will want to do.”

Both focus groups emphasised that for a community sentence to be effective, it should be tailored to the individual and address the root causes or underlying issues driving the individual’s offending behaviour. This was a prominent theme in both focus groups, and all participants agreed with these principles. One described how personalised interventions could open the door for further transformation and positive change:

“I think that a more effective outcome ... it has to be something that resonates with the person, you find something which they like in order that will help change their mind-set and then you can manoeuvre other subtle possibilities while they’re in that space.”

Similarly, another participant suggested that community sentences should match the variety of individuals' underlying issues:

"There should be different kinds of community sentencing, I believe, and addressing what the issue is. Whether it is drugs – if it is drugs, then it should be workshops to deal with drugs. Whether it is, you know, just being lost, not having that basic knowledge of what life is about, about taking responsibility – you know, simple things like this, simple, simple things."

Another participant drew on her experience of working in a women's reintegration centre, explaining how she witnessed the positive results of personalised support for female offenders:

"You see how effective it can be when women are given the right support. You know, addressing their addiction or their mental health and then making them move on and, you know, have the confidence to better themselves and to not reoffend."

A further two participants described the importance of identifying and treating the root cause of offending behaviour. Failure to address these drivers, they suggested, kept people locked in a cycle of re-offending:

"Any addiction is a habit, it's a habit of behaviour like we all know, right, so it's to get to the root cause of the habit. Why are you doing that habit, why have you got that behaviour? You know, half of them wouldn't even go back to courts if they understood what they were doing, half of them don't even understand."

"It's not just making them do the community service and then go back, because they have a reason why they've committed a crime. So, get that reason sorted."

Overall, the participants' responses clearly indicated their rejection of any one-size-fits-all approach when devising effective community sentences. Participants repeatedly stressed that community sentences were much more likely to be effective when they were considered 'meaningful' by the individual. Meaningful interventions meant different things to different participants, but common themes included:

- Work- or employment-based community sentences;
- Sentences which offered the opportunity to develop skills and experience;
- Sentences which were relevant to the individual's interests;
- Enabling individuals to give back to the community and see how their work was impacting; and
- Positively-framed sentences which helped build self-confidence and self-esteem

All these factors are encapsulated in a final point of consensus on how to make community sentences more effective: both groups cited the value of personalised interventions that address the root causes of offending.

2. Relationships with criminal justice system staff

The second main theme identified in the data was the importance of the relationships between offenders and criminal justice staff. This theme included the factors which affect offender-staff relationships, and the impact of a strong relationship on offenders' journeys through the criminal justice system.

Participants drew a distinction between deep and surface relationships with criminal justice system staff. Deep relationships were exemplified by staff who:

- Take an active interest in offenders' lives

"Something just clicks in your head that your shoulders go back, your head goes up, there's another way of living your life ... And it changes your life. And that's all you need, someone to take a bit of interest."

- Show empathy and a caring attitude

"I think a good probation officer cares about your future. They care about your future and they know you want to change. They're going to help you."

- Seek to identify and address the underlying issues behind offenders' criminal behaviour

"They need to find out what the root cause is, like, why this person is doing the things that they're doing."

"If they get to know you and understand what you're about, then they can give you the right support."

This last quality was particularly prominent in the focus group responses, and emphasised by most participants as crucial to improving their journey through the criminal justice system. Surface relationships, on the other hand, were exemplified by staff who:

- Take a pro forma approach to pastoral care

"I think a lot of them are just doing their 9-to-5, and there should be some kind of group or something set up where if you want to speak to somebody in depth and they record your personal issues, they should be allowed to do that."

"Having somebody who's just there to tick-box and they're not helping you, and you're reoffending, you're coming back and you still have to go back again. It's pointless."

- Hold a negative or pessimistic view of the offender and their prospects

“The officers when you’re in prison, they’re like, ‘Oh yes, see you in a few weeks then’. That’s just basically saying, you’ve got no belief.”

- Treat offenders with a lack of dignity

“They don’t deal with us as human beings and this is where the problem lies. Probation doesn’t see anyone as a human being, the police doesn’t see anyone as a human being. The care system doesn’t see anyone as a human being.”

Appointments with probation officers were seen as a key opportunity for fostering strong relationships, but numerous factors affected this potential. For example, most participants agreed that longer appointment times were necessary to build trusting relationships:

“It would be easier if [probation appointments] were longer than 10-15 minutes. Like for an hour or something. You can tell them your problems. You can tell them your issues. Mental health, housing, money issues, whatever. It’s longer than 10 minutes where you just can’t, sort of, get a good relationship.”

In addition, many participants pointed out that probation officers collect considerable personal information during their appointments (particularly in the initial meeting), but do not use it in rehabilitative efforts or sentencing. They viewed this as a missed opportunity for sentencing tailored to the offenders’ needs:

“Because [probation officers] sit with you, they’ve questioned you and your background, what you want to do, why did you commit the crime and everything. Why can’t what they have written be used in your sentencing?”

Staff turnover was also cited as a significant obstacle to developing participants’ relationships with probation officers and other criminal justice staff. Most participants described having multiple probation officers throughout a sentence, and discussed how this had a negative impact on them:

“I’ve had seven different probation officers since I got released from prison. I got passed back and forth... I only met two. One of them twice and one of them for, like, five minutes.”

Several specific detrimental effects were associated with high staff turnover. In particular, participants noted that having to retell their histories to ever-changing staff is frustrating, demoralising, and detrimental to rehabilitation. Where that history involves trauma and abuse, revisiting events can be traumatic in and of itself:

“It’s really important because... all of us have deep stuff which is part of what’s brought us to where we are. And like, if you’re going to share that with a probation officer and then, all of a sudden, they’re gone, you’re not going to want to share it with someone else. And then you keep re-traumatising yourself as well.”

“That’s the main thing is like, where are they going to refer you to, get you help for mental health, whatever? You know? Housing, all of that sort of stuff. You don’t want to have to keep going in and repeating yourself and repeating yourself and starting again because that is what it is. Starting again. You’re supposed to be in there, to start a journey, to put you somewhere that’s better than where you’ve just come from.”

Most participants agreed that high staff turnover and the resultant repetition also led to a sense their trust had been breached:

“I shared some quite personal stuff with mine which I won’t be doing again because I don’t know how long that person will be there for. I don’t want to keep repeating myself.”

Indeed, consistency in the relationship between criminal justice staff and offenders was described as critical to fostering the trust that underpins a deep relationship:

“I prefer to deal with one person as a probation officer. ... [I’m] telling this probation officer things which I thought I would never say and it’s hard enough to get out as it is. Do you know what I mean? So, it’s like, I prefer to keep the same [officer].”

Another participant described how a lack of consistency was actively damaging to his criminal justice journey:

“Within the last six months, my probation officer changed about three times... I was all over the place. Different probation officers. It didn’t help. And I actually ended up not going back to probation.”

Overall, having a deep relationship with criminal justice staff was seen as essential to successful rehabilitation and other related outcomes. Yet most participants had experienced inconsistent, surface relationships with staff assigned to them. Factors put forward by participants which hindered the development of deep relationships included high staff turnover, short appointments and uncaring staff.

3. Issues in the broader criminal justice system

The final theme related to participants’ views on the issues affecting the broader criminal justice system, as well as their suggestions for how to improve the system.

A primary cluster of issues raised concerned the delivery of services. Participants drew particular attention to the challenge of getting the necessary referrals, citing the following common experiences:

- Referrals not being followed-up by probation officers

“They need to know how to deal with a person – what services are available for people, they need to know! It’s not just about saying, ‘Oh yeah, we’ll refer you to this,’ and then leaving it.”

- A lack of available services, with too few options offered to offenders

“I knew that for me it was different. I needed a different method of addressing my addictions. But yeah, there should be a wide range available to everybody.”

- Available services under-resourced and under-staffed, with long waiting lists

“You’re being told that you might have to wait two years for some type of trauma therapy, and they know that you need that. You can’t wait two years. They need to be able to find another service that can see you quicker. You know, because I’ve had to go and find it myself and I’m actually now paying for my own trauma therapy because I can’t wait for the NHS.”

“The problem is though, they always talk about they haven’t got resources for this. Staff are always going on leave because they can’t cope. Like waiting lists are just ridiculous. So, all of that needs to be looked at.”

- Staff lack information or awareness of available services and provisions

“[The probation officer] wasn’t useful for me at all. She gave me the wrong information and then she doesn’t let me know anything, I have to be the one telling *her*.”

Many offenders face multiple, complex problems that span multiple services, yet it can be challenging to secure just one appointment. Several participants suggested that outcomes could be improved by better integrating service delivery:

Participant A: “I’ve got issues with alcohol and drugs and stuff and being signposted here, there... You feel like you’re being dragged from pillar to post. Certain places are trying... there’s an organisation called ‘Inspire,’ all under one roof. They’re trying to get all the services or most –”

Participant B: “Integrated services.”

Participant A: “Yeah, which is a good thing.”

Another issue flagged within the broader criminal justice system concerned the stigma of criminal records. Participants felt this stigma was indicative of a general punitive culture across the system as a whole. For example, almost all participants had faced acute challenges securing employment with a criminal record. And without a job, they were more likely to reoffend:

"I've got criminal records that have completely blocked every opportunity... every choice that I've tried to make in my career, and so it draws me back into criminal life."

Moreover, the negative repercussions a criminal record has on job prospects radiate out beyond employment. Participants described the process as demoralising, damaging to their sense of self-worth, and their sense of self.

"You become that, because that's all you are... You have low self-worth. Every time you go for a job you have to declare it, and you're sitting there having an interview with the safeguard and issuing officer or whatever, and it kind of just puts it back into that. You need to answer to someone up here, and then they say 'no'... You're reliving it and it's like 20 years ago, 30 years ago, and you still have to go through it."

Multiple participants described the stigma of criminal records as a form of continuous punishment, which long outlasts the actual sentence:

"When you go to prison, do you not get punished? Or when you do your community service, do you not get punished? Where does it stop? Where does the punishment stop? And that's the problem, you know, the punishment *never* stops. Once you've been branded a criminal, the punishment does not stop."

"The trouble is, mud sticks doesn't it? You do something bad and nobody forgets, you do something good and nobody remembers."

Overall, participants explained that the social stigma of criminal records left them feeling alienated, frustrated and demoralised:

"It makes you feel inferior and it makes you not want to go [anywhere] in the first place... You are actually isolated from society... You know you can't be part of it."

They suggested that the negative outcomes associated with a criminal record could be mitigated through better system-wide continuity. For example, if an offender obtained training or qualifications during a custodial or community sentence, there should be a pathway to securing related employment post-release:

"If you're going to give me bookkeeping, Sage accounts, things like that to do, at least find me... at the very, very least, an employment agency – you know, even if it's temporary – who deals with this industry."

Indeed, in terms of rehabilitation, participants noted that insufficient mechanisms were in place to help them continue to build upon the skills and opportunities developed during their time in prison post-release. They suggested there should be more of a bridge between prison and probation, describing experiences where little carried over from custodial to community sentences. Participants stressed the need for better through-the-gate care:

“There was no sort of referral or bridge from in the prison. I had to come out, sort of realise that I’m not getting anywhere with my CVs, realising that you know there’s not much coming out of this probation sort of relationship other than me going there.”

“Continuity, being able to finish your studies once you get out, and that should be a standard given.”

Two participants suggested that better opportunities could be offered to offenders post-release if local communities took an active role in rehabilitation. They also recommended greater involvement of service users in discussions around support:

“We need more committees you know, we need to find our own committees, support into communities to get things to work because the system is failing us.”

While participants felt stigmatised in general, those from BAME backgrounds reported further experiences of prejudice and discrimination within the criminal justice system:

“Discrimination is deep in our system. Racism is deep in our system. We all know these things, yeah... They just see you, they project what you are and that’s it, just like sentencing.”

Perceptions of unfair and unclear sentencing were not restricted to BAME participants. A common refrain was that sentences are often handed down without explanation of their purpose or the court’s expectations of the offender. Participants stressed the importance of clearly communicating to offenders the meaning of their sentence:

“[Offenders] might be so confused that they haven’t even acknowledged what sentence they’ve got. They just get a letter through the door, you’ve got to turn up here and that’s it.”

The focus group participants also lamented that there was so little meaning behind many sentences. Meanwhile, the decision makers driving poor outcomes across the criminal justice system, according to participants, were not being held to account:

“If you’re issuing a sentence, whether it be prison or community, and yet this person has got substance issues, mental health issues, homelessness issues and you haven’t addressed them, just putting them into some sort of punishment – I think somebody should be held accountable, because that’s been going on too long.”

Taken together, the participants’ issues with the broader criminal justice system have fuelled a profound sense of alienation and mistrust of the system as a whole:

“I don’t have any faith – I’m so sorry, but I just don’t have any faith in probation whatsoever, or the police.”

If participants were united in their condemnation of the status quo, they were divided on whether they believed the system was at least moving in the right direction. Some saw evidence of limited progress:

“I don’t trust the police force but I will say one thing, things are getting better. Things have changed over the last 20 years.”

However, a greater number believed criminal justice reforms had delivered little but noise:

“All these questions get asked of us with that organisation, this organisation, this organisation... The year 1991, ‘96, and we’re still in the same place. Now my thing is, right, I’m here today, what else changes? Because we’ve been talking about this for 20 years and there’s still no change in it.”

Overall, the third theme drew out numerous issues that participants felt had undermined their criminal justice journey. Their responses indicated a lack of trust in the system as a whole, based on a lack of support from both staff and services, endemic discrimination, and little accountability for those making decisions despite their profound impact on the lives of offenders. The stigma which followed them through and beyond criminal justice journey, long after they felt their debt had been paid, provided an additional source of frustration and isolation.

Implications

The principle implication of the focus group outputs is the importance of a personalised, holistic approach to criminal justice and rehabilitation. Virtually every issue raised by the service user participants could be mitigated by such an approach. Its potential for success, however, is inextricably linked to criminal justice staff, who must be resourced, trained, and retained in order to develop deep, trust-based relationships with service users.

Yet there is a limit to what even the most motivated staff can deliver. The improvements suggested by the focus group participants would also require:

- Easier access to support services, from employment to drug treatment to housing
- Integration of services across the offender journey, with through the gate care
- Better representation for local communities and service users in the design and implementation of punishment and rehabilitation
- Sentencing reform to allow judges to target the root causes of offending behaviour

6. Innovations we can learn from

No system is perfect, and comparisons are difficult to draw when it comes to an area as complex and multifaceted as criminal justice. Yet both at home and abroad, examples may be found of innovative interventions that are successfully preventing some kinds of crime and punishing and rehabilitating offenders. Over the following pages, we identify exemplars of good practice and innovation in criminal justice reform, while exploring how other systems have transformed themselves to meet contemporary challenges.

This review reveals both practical and theoretical insights into how we can redesign our own system to reflect and manage the complexity of offenders' lives. We identify three key imperatives which must underpin any new model of reform:

1. Devolving power to shift money upstream
2. Integrating services
3. Deepening relationships

Devolution

Safety Houses in the Netherlands

The Netherlands provides a fascinating case when considering the ways that justice could be rewired. The country reduced its prison population by a dramatic 43% from 2005 to 2015, going from 14,468 individuals in prison to 8,245. The Netherlands previously had one of Europe's highest rates of prison use; within a single decade, it transformed itself to have one of the lowest. Much of this success is connected to policy innovations in sentencing and rehabilitation, including the use of electronic monitoring, case management of prolific offenders and a multi-agency approach to offender resettlement.

Problem

Despite a significant fall in overall crime from 2002, between 2006 and 2009 the Netherlands was experiencing increasingly high levels of 'high-harm' and 'high volume' crime - house burglary, street robbery and violent crimes, committed largely by individuals with complex needs.

Insight

By developing a decentralised approach to implementing targeted, personal and combined interventions, different agencies - both within and outside of the criminal justice system - are able to come together to target different aspects of an offender's rehabilitation in the community. They are able to create a tailored plan to assign appropriate action to assist the individual's non-offender identity i.e. addiction, debt or housing support.

Reform

Local municipalities lead centrally-funded, multi-agency boards called 'safety houses,' which focus exclusively on high-harm crimes and complex, prolific offenders. Individual cases are discussed weekly with representatives from all relevant agencies, the composition of which changes depending on the interventions deemed necessary for each offender. A national framework provides a broad outline of requirements for Safety Houses, but allows for local flexibility. Safety Houses, via the public prosecutor, can refer prolific offenders (those who have

received at least 10 sentences in the last five years) to a special custodial measure which flexibly shifts individuals in and out of custody depending on their progress.

Outcome

The Dutch Safety Houses deliver a decentralised approach to implementing targeted, personal and combined interventions. Each agency representative is tasked to assist the individual with issues external (if not unconnected) to their offender identity, like addiction, debt or homelessness.

Implications for reform

- In England and Wales there are few effective interventions taking place in the community and no incentives/requirement for local agencies from outside the criminal justice system to work together to tackle complex causes of offending
- Offenders are treated as a homogenous group in our current criminal justice system – with a lack of personalisation to their sentence

Durham: Checkpoint Critical Pathways deferred prosecution scheme

Durham today boasts one of the country's top performing police forces. In its most recent PEEL assessment (2017), Durham was evaluated as 'Outstanding' in policing effectiveness and efficiency, and 'Good' in terms of legitimacy. Since 2015, Durham's strong performance has been driven in part by its widely lauded deferred prosecution scheme, Checkpoint.

Problem

Police in Durham were keen to reduce reoffending and by extension frontline demand on police. They watched as the same lower-level offenders cycled through the system, over and over; traditional out of court disposals were clearly ineffective at reducing reoffending or promoting rehabilitation. Meanwhile, even in the case of minor offences, out of court disposals left an indelible mark on the offender's record.

Insight

Traditional out of court disposals like cautions – like fixed penalty notices and community resolutions – did little to address the drivers behind offending behaviour. The Checkpoint programme was designed as an 'alternative' out of court disposal based on early, tailored multiagency interventions to tackle the root causes of offending. Durham hoped that through Checkpoint, they could reduce reoffending and demand, protect victims, and improve the life chances of offenders.

Reform

Since its launch in April 2015, Checkpoint has offered eligible offenders in Durham the chance to avoid prosecution if they agree to a four-month contract comprising up to five conditions. Participants must admit to their crimes and commit to not reoffend for the duration of the contract; if requested by their victims, they must take part in restorative justice. Contracts require offenders to undertake voluntary work in their community and/or wear a GPS tag, as well as conditions specific to their offence (for example, drug and alcohol treatment). In addition to working with victims, further steps are taken to clarify to offenders the harm they have caused. They may be shown bodyworn video footage of their arrest, or educated on how drug money funds more serious crimes like terrorism.

Each individual contract is designed by a trained ‘Navigator’ in consultation with the offender. The same Navigator will accompany the offender throughout their Checkpoint journey. Those who complete the contract will see no further action taken by the criminal justice system, while those who fail to do so will be charged and prosecuted. Participants enter Checkpoint in one of two ways: by appointment at a police station, or at the point of arrest. Only certain types of low-to-mid level offenders are considered for Checkpoint; serious crimes including rape, murder, and robbery are ineligible.

Since 2017, officers determining eligibility for inclusion in Checkpoint have been supported by Durham’s Harm Assessment Risk Tool (HART). HART, developed in cooperation with Cambridge University, is an artificial intelligence system built on historic local crime data. The HART algorithm relies on 4.2 million data points and uses 34 factors (such as age and offending history) to determine whether a subject is at low, moderate, or high risk of reoffending over a two year period. Durham insists that Checkpoint’s eligibility criteria – and officer input – are weighted more than HART’s assessments in decision making. HART’s major contribution, according to Durham, is as a check and balance, promoting a more consistent approach to understanding risk.

Outcome

It is still early to assess Checkpoint’s impact on reoffending in Durham, but preliminary evaluations are overwhelmingly positive. In a controlled trial, offenders who participated in Checkpoint were less likely to be re-arrested or convicted than those offered traditional out of court disposals. As of October 2017, “The Checkpoint pilot phase cohort achieved a lower re-arrest rate (18.3% vs 30.4%) and proven reoffending rate (14.6% vs 21.9%) in comparison to a Durham out of court disposal sample. Furthermore, the trajectory of proven reoffending for the Checkpoint cohort suggests a slower rate of increase, with the potential for this gap (in reoffending) to widen over time.”

Checkpoint is gradually expanding to include other types of offences. A year into their trial inclusion of domestic-abuse offenders, the vast majority of Checkpoint’s DA participants have not reoffended. There is some interest in establishing Checkpoint pathways for cyber crime and sex crime, though both remain some ways off in the future. Durham’s success has been notable enough to inspire the development of similar schemes in Devon and Cornwall, Surrey, Sussex, and Cleveland police force areas.

As the nation’s best known keyworker-centred L&D scheme, Checkpoint’s funding is secure for the time being. In theory, the programme should eventually *reduce* policing costs, allowing savings to be reinvested in Checkpoint. In any case, Durham police are adamant that this type of intervention be viewed as a core policing function, rather than an optional add-on – policing, after all, is about prevention as well as detection.

Integration

Scottish prison service ‘throughcare’ model³³

Scotland’s criminal justice context has traditionally been similar to England and Wales. This makes Scotland’s recent embarkation on a programme of through-the-gate reforms particularly

³³ This case study was amended because the original version of the report incorrectly referred to the throughcare model as a HMP Edinburgh initiative. It was first developed in HMP Low Moss and HMP Greenock and was then rolled out to HMP Edinburgh and the other prisons in the public sector in Scotland that hold short term prisoners who are not subject to post release supervision.

instructive for rewiring our own system. Since 2015, the Scottish prison service has offered a 'throughcare model' for low-level offenders at 11 of the country's 15 prisons, providing continuity of support at each point along the offender journey.

Problem

Like England and Wales, in the early 2010s Scotland's justice system suffered from a high prison population, stubborn rates of reoffending and poor support for offenders during – and especially after – release. External organisations tasked with rehabilitation and reintegration often struggled just to gain access to the offenders in prison, making it that much harder to build trust and understanding.

Insight

In light of these persistent issues, the Scottish prison service recognised the need for better continuity and more joined-up through-the-gate services.

Reform

The Scottish prison service's voluntary throughcare is delivered by Throughcare Support Officers (TSOs). These are prison officers, based within the prison, who work with short term prisoners (serving sentences of up to four years) from six weeks pre-release through three months post-release. This includes help with accommodation, setting up bank accounts and connecting with health services. TSOs go out into the community with inmates after their release. A key advantage of this model is that as prison officers, they have 24/7 access to inmates. This makes it easier to foster close relationships between staff and offender, and allows TSO offices to act as a service 'hub' for other outside agencies/services.

Notable reforms include:

- The implementation of a common performance framework across all public services, so that outcomes are shared
- A focus on reducing the prison population with a presumption against handing out short prison sentences across Scottish courts (being extended from 3 to 12 months in 2018)
- A restructure of probation delivery after Scotland scrapped regional probation bodies, giving responsibility back to local areas in order to encourage local buy-in and collaboration

Outcome

TSOs are able to get a better picture of a prisoner's needs and circumstances and crucially build more meaningful relationships, unencumbered by the many of the challenges faced by external services attempting to connect with prisoners pre-release.

Implications for reform

- Through-the-gate (TTG) in England and Wales is struggling as probation officers are unable to build meaningful relationships with individuals pre or post release
- TTG services are fragmented - third sector agencies are not able to provide vital wrap around support

Public Health Approaches to Violence Reduction

Since the early 1990s, 'public health approaches' have garnered attention globally as a means to reduce serious violence, with promising results. The 'public health approach' is defined by its epidemiological, evidence-based approach to violence reduction and prevention. Public health

interventions are based on the collection, analysis, and monitoring of accurate data from the target community.

Public health approaches emphasise practical solutions for reducing violence, and prioritise harm reduction for the community as a whole. This means they focus on factors which facilitate the spread of violence rather than its root causes. Through the collection and analysis of local data, these approaches identify risk and protective factors associated with violence in a defined community, allowing policy to target these factors directly. Interventions emphasise shifting norms within a community, and are subject to continually monitoring and revision.

Problem

Public health approaches are usually introduced to combat crime which has proven impervious to traditional approaches to violence reduction. They view violence itself as a communicable disease, for several reasons:

- Violence poses direct and indirect threats to public wellbeing
- Violence is self-replicating
- Violence is preventable, interruptible, and treatable

Insight

The key insight is that violence must be treated, managed, and ultimately cured the same way doctors approach an infectious disease: by carefully analysing data and stopping its spread. Public health approaches fill the gaps in crime data with figures from other sources, like A&E departments or school systems.

An important aspect of this is that public health approaches are designed to deliver 'bottom-line' results, seeking the best possible outcomes for the most people. Their priority is to limit the spread of harm. To this end, public health approaches prioritise interventions that address risk and protective factors, rather than root causes: instead of uncovering why people are violent in the first place, public health approaches aim to reduce the chances that a conflict will escalate to violence.

Examples of Reform

Discussions on public health approaches to violence significantly outpace their actual implementation. Where public health approaches have been piloted, they generally correlate with reductions in (some kinds of) violent crime over the medium term, especially when paired with traditional law enforcement interventions.

Case study: Cure Violence, USA

Among the best known (and best studied) organisations promoting a public health approach is Cure Violence, launched by Dr Gary Slutkin in Chicago in 2000. Over the past two decades, Cure has expanded across American cities and into other countries. Their model applies evidence-based research to 1) stop conflict from escalating into violence; 2) find and treat risk factors; and 3) shift norms within the community. Implementation – often in the form of mediation – is led by trained 'interrupters' drawn from local communities, who may themselves be former offenders. Cure places considerable weight on its policy of non-judgment and political neutrality.

Cure Violence's interventions have been studied extensively, and are broadly evaluated as

successful. Recently, Cure was associated with a marked decline in gun violence in parts of New York City where it operates. Yet as of June 2018, the US Department of Justice classified the Cure Violence programme as “promising” rather than “effective,” as Cure has been linked with reductions in violence “in some neighbourhoods but not others”. Academic research shows similar caution. Cure’s results are broadly in line with US trends nationwide, complicating efforts to prove causality. One study attempted to control for these factors through a simulated experiment. It tested the influence of two interventions – the Cure model and stronger police patrols – on a simulated sample of the New York City adult population over a ten-year period. The results suggest that a dual approach, combining a public health approach with stronger policing, “can achieve more to reduce population-level rates of urban violence than either can in isolation.”

The effectiveness of any public health approach depends on the quality and quantity of data available for the population. Practitioners must ‘follow the data’ and resist any instinctive biases towards certain kinds of interventions (like early interventions or behaviour modification). Public health approaches tend to be more effective when they emphasise ‘passive’, low-effort protection strategies rather than those which make people go out of their way to take ‘active’ measures.

How data can reveal unseen drivers of crime: Colombia

From 1983-93, homicide rates in Cali, Colombia rose from 23 to 126 per 100,000. (For comparison, the 2012 global average was 6.2 per 100,000.) In 1992, newly-elected Cali mayor Dr Rodrigo Guerrero introduced a public health approach to violence. In the first year, Cali’s murder rate dropped to 100 per 100,000. After this success, a public health approach was introduced in the capital, Bogotá. In Bogotá, success was more dramatic and sustained: homicides fell from 80 per 100,000 in the 1990s to just sixteen by 2012.

Back in 1992, people had attributed the spike in violence to fighting linked to the rise of the Cali drug cartel. But after Guerrero and his colleagues devised a more accurate system for data collection, analysis disproved the cartel theory: instead, homicide in Cali most closely correlated with holidays and paydays, intoxication, and firearms possession. Once these homicide ‘risk factors’ had been identified, effective interventions were targeted towards licensing laws and gun permits. Later measures to reduce violence included the installation of street lamps in poorly-lit hotspots where gang members liked to congregate. The Colombian case highlights the potential for a robust epidemiological approach to reveal unseen drivers of violence.

Public health approaches appear to be both cheap and effective, yet they remain limited in their implementation. One major obstacle comes from bureaucracy and politics within the criminal justice system. A 2015 scholarly review observed that public officials often resist alternatives to traditional law enforcement solutions (especially if it means working with former offenders).³⁴

Public Health Approaches in the UK: Cardiff and Scotland

In Cardiff, the Violence Research Group (and its operational arm, the Cardiff Violence Prevention Group) was founded in the 1990s, after a Welsh surgeon noticed he was treating ever more violent injuries but the vast majority were not reported to the police. He pushed for

³⁴ https://www.annualreviews.org/doi/full/10.1146/annurev-publhealth-031914-122509#_i14

an epidemiological approach to violence reduction based on better information sharing between Welsh hospitals and police forces, an approach now known as the Cardiff Model. From 2002 to 2013, hospital admissions for violent injuries halved, saving Wales around £5m annually.

Scotland's 'radical' public health approach launched with the formation of the Violence Reduction Unit (VRU) in 2005, when Scotland had Europe's second-highest murder rate: 2.33 deaths per 100,000 people annually, compared with 0.7 in England and Wales. Despite major investment and strong charging rates, police were failing to stop violent crime. After implementing a public health approach, Scotland's homicide rate fell 47% from 2008-17. By 2014-15, convictions for handling an offensive weapon were down 67% on 2006-07 (82% among under-19s).

The VRU aimed to reduce violence through long-term attitudinal changes in society (rather than quick fixes) and its strategy incorporated traditional law enforcement interventions. Built on this foundation of 'focused policing', the Scottish approach prioritised engagement with community stakeholders, community policing, early prevention through support for at risk-children, and reframing the media narrative around violent crime. It enjoyed relative freedom to operate thanks to its autonomous position between policing and the government.

NHS England Integrated Care Systems: Vanguard

Outside of criminal justice, other UK institutions also face pressure to deliver more integrated, efficient, and effective services, especially in light of austerity. Health services in deal with many of the same issues at stake in the criminal justice system: high demand, service users with complex needs, poor coordination and continuity across a confusing network of siloed services, and over-reliance on expensive institutional care which may be unnecessary for treatment. As such, NHS innovation and reform is highly instructive for criminal justice.

Problem

Over the last eight years the NHS has faced a crisis: funding has been slashed at the same time patient loads have risen; these patients, moreover, are older and sicker than ever before. Too large a slice of their limited budget is sucked up treating patients in hospital, many of whom may not require urgent or critical care. The hospital-centric model is ineffective in terms of costs and patient outcomes.

Insight

The NHS recognised that successful treatment of long-term and complex conditions required the integration of services around the patient. Bridging the divide between hospital and community care is especially crucial for relieving the ever-growing demand on emergency departments, as well as improving access to care for chronically ill patients.

Reform

Beginning in 2015, the NHS integrated care system approach (previously known as the 'accountable care systems') was spearheaded by fifty 'vanguard' areas around England, covering over five million people. The programme aims to reduce unnecessary demand on hospitals while providing better, more accessible care for patients. Its ultimate goal is to provide

a blueprint for the redesign and reform of healthcare nationwide, as part of the NHS's 2014 Five Year Forward View.

There are five 'vanguard' new care models in operation, focused on interrelated issues: joining up community and NHS healthcare provision, coordinating between NHS trusts to ensure more consistent standards of care, reducing demand on A&E departments and hospital beds, and moving some kinds of specialist care away from hospitals and into the local community, where they are easier for patients to access. Specific solutions are designed and implemented locally in each vanguard area.

Outcome

Demand for acute beds in vanguard areas has shown lower rates of growth than the rest of England, with some vanguard areas showing an absolute reduction. The most successful of the vanguard efforts have focused specifically on the people causing the highest levels of demand: patients with multiple and serious long term conditions who use the NHS most often. This success, however, has not been cheap, with the NHS investing upwards of £100m in funding for its 50 vanguards each year. However, the hope is that the programme will generate savings in excess of these sums in the medium-to-longer term.

Implications for criminal justice reform

Prisons, like hospitals, are struggling to cope with demand, with many of the same service users recycling in and out of the estate. Much of that demand is driven by users dealing complex issues. The continuing use of short custodial sentences by UK courts (and the poor outcomes associated with them) is comparable to the disadvantages of treating NHS patients through fragmented, hospital-based episodes of care. The local, integrated approach adopted by NHS Vanguards has shown promising results, and should be seen as a viable model for adaption by the criminal justice system.

Deeper relationships

Khulisa: Breaking the cycle of violence through behavioural change

For the past decade, the London-based social care organisation Khulisa (named for the Zulu word for nurture) has operated across the UK, with the aim of reducing reoffending and improving outcomes among vulnerable young offenders. In particular, Khulisa's focus is on breaking cycles of self-destructive behaviour.

Problem

The justice system tends to treat issues like socio-economic disadvantage, school exclusion and offending as distinct, but they are deeply interconnected. Marginalised young people such as care leavers and excluded pupils are disproportionately at risk of falling into a cycle of crime and self-destructive behaviour, which reverberate across generations.

Insight

Khulisa believes that better integration of mentorship and support services is necessary to address root causes, disrupt self-destructive patterns of behaviour, and break the offending cycle. They suggest prevention and rehabilitation efforts should target risk factors associated with social marginalisation, exclusion and crime at each stage along the criminal justice journey. The aim is to tackle the root causes of violent and anti-social behaviours, and in turn break the cycle of exclusion and crime by intervening at each stage of the criminal justice cycle.

Reform

Khulisa delivers behaviour change and personal development interventions to young people in schools (including Pupil Referral Units), prisons, youth offending institutions, and within the community. Through intensive therapeutic support and mentoring, Khulisa's interventions aim to build up participants' wellbeing, self-awareness and emotional resilience. They only use qualified, trauma-informed therapists as intervention facilitators, who are well-equipped to develop a deeper relationship with participants. Each programme is personalised and collaborative, taking into account differences in developmental and emotional maturity.

Beyond their direct engagement with at-risk young people, Khulisa's secondary aim is to support other care and rehabilitation professionals and share best practices, in order to encourage institutional/systematic change.

Outcome

Recent external evaluations indicate that Khulisa's interventions help reduce hostility and aggressive behaviour among participants, while also making them more resilient to stress. Just 7.6% of those who completed a Khulisa intervention went on to reoffend, compared with 31% in the control group. 98% of pupils demonstrated positive behavioural changes, with 91% maintaining good performance in school 12 months after completing the Khulisa programme.

Implications for reform

Khulisa's success demonstrates the salience of root causes in offending behaviour. Their evidence-based approach, based on good quality personal relationships, is effective in changing behaviour among vulnerable young people. By working across all key stages of the criminal justice journey – before, behind, and through the gate – Khulisa's interventions can act to prevent, rehabilitate and reintegrate at-risk individuals, offenders and ex-offenders respectively, demonstrating the wide-ranging benefits of an integrated and personalised approach.

Switchback: Rehabilitating young offenders through strong, healthy relationships

Switchback launched in 2008 in London, with the aim of reducing reoffending and keeping young men out of custody.

Problem

According to Switchback, younger prisoners show higher than average recidivism rates: 44% of individuals released from prison will be reconvicted within 12 months. 18-30 year olds are over-represented in the prison and probation systems – despite making up one-sixth of the UK population, they constitute a full third of those in prison, and half of probation's caseload. Whilst many excellent specialist rehabilitation agencies exist, they seemed to have little impact on among young men.

Insight

Switchback recognised that young offenders often lack the “confidence, knowledge and continuity of support” to understand their options for rehabilitation. This makes it even harder for them to shift the way they think and act in meaningful ways. Switchback built an alternative model to rehabilitation and through-the-gate services that took these factors into account. Switchback's approach is centred on strong, stable relationships between young offenders and

a Switchback mentor. Their 'theory of change' holds that joined-up support based on trusting relationships creates a 'safe space' for personal transformation and empowers offenders to make positive life changes.

Reform

Switchback offers intensive one-to-one mentoring and integrated support across all areas of a Trainee's life, with Mentors and Trainees in constant communication. Mentors and trainees begin working together three months prior to release, and continue post-release for as long as the trainee needs (the average duration is 21 months). The aim is to build sufficient stability and resilience to sustain positive change. To participate, prospective Trainees need to demonstrate their commitment and willingness to change, and have a realistic view of the challenges ahead. With the exception of sex offenders, who are excluded from Switchback, trainees come from all offender categories.

Switchback describes its mentorship model as 'semi-therapeutic'. Mentors are not volunteers, which means they are able to fully dedicate themselves to their role. They communicate with trainees daily, and get to know the core people in a trainee's life.

Another core element of Switchback's approach is a focus on keeping young men in work. Trainees begin working in Switchback's training cafes, while their mentors support them in finding rewarding, long-term employment. They also target stability across 10 key areas of a trainee's life, including mental and physical health, independent living skills, finances, attitudes and behaviour, interaction with the justice system, and relationships.

Outcome

Switchback's data shows a reoffending rate of just 9% for their trainees (versus 44% for young offenders post-release overall). Over four-fifths of trainees secure permanent employment after completion of the programme.

Implications for reform

Many organisations working in rehabilitation stress the importance of strong relationships: Switchback's key innovation is removing the barriers which usually prevent these bonds from being forged. In particular, Switchback makes all its mentors paid employees, and avoids all 'outcome-based' funding contributions. Both factors allow them to devote as much time as needed to support ex-offenders. Switchback's success is thus a further indictment of the outcome-driven approach to rehabilitation epitomised by the CRCs.

Tempus Novo: Offender rehabilitation through supported, sustainable employment

Another organisation delivering results through strong, sustained relationships is the Yorkshire-based Tempus Novo, founded in 2014. Tempus Novo's target cohort are adult offenders with a desire to turn away from crime, and its core objective is to match 'graduates' with full time employment.

Problem

As noted above, in recent years, the rate of prisoners who go on to reoffend within 12 months has remained static at just under 50%. The figure is a staggering 58% for those serving short sentences. In addition to the detrimental impact reoffending has on society, and the offenders themselves, it is a massive drain on public funds. Tempus Novo estimates that reoffending

costs the government as much as £15 billion per annum. Offenders who stay out of prison but also out of work, moreover, cost £10,000 a year in benefits. Full time employment is among the factors mostly strongly correlated with rehabilitation: those in work see their chances of reoffending drop by half. Yet only a quarter of offenders leave prison with a job.

Insight

Tempus Novo is founded and managed by senior prison officers with decades of experience in the criminal justice system, including Offender Management and Resettlement. This gives them great insight into what kinds of interventions work, and for which offenders. Based on site at HMP Leeds and HMP Wealstun, Tempus Novo has access to criminal justice resources other rehabilitation groups lack. When setting up Tempus Novo, they knew there was a significant segment of offenders, typically in their 30s and 40s, who had reached a point where they were ready to essentially 'grow up,' stop offending, and get their lives together. This is the cohort Tempus Novo targets, and the 'attitude factor' is a strong driver of their success.

Tempus Novo also capitalises upon established stakeholder relationships. The organisation realised it could leverage connections with businesses, government, and resettlement-related agencies and services to offer more robust through-the-gate support. In particular, it was positioned to connect prisoners with employment in a safe, controlled manner that could allay employers' fears.

Reform

Tempus Novo's core task is matching ex-offenders with suitable, sustainable employment, from warehouses and distribution to manufacturing and clerical work. Since 2014, it has built up an impressive network of (mainly, but not exclusively) small and medium sized local companies willing to offer a step on the employment ladder to ex offenders who want a fresh start.

Working on site allows Tempus Novo to identify promising candidates and for interested prisoners find them. Once accepted, the mentoring programme begins several weeks pre-release and continues (with the same caseworker throughout) for at least half a year after employment. Throughout the process, support is also provided to employers. Because a work ethic alone is not enough, Tempus Novo caseworkers provides support on all other aspects of resettlement in addition to employment.

Outcome

In its first two years of operation (2014-16), 98% of the offenders who interviewed for a job were able to secure employment, with a six-month retention rate of 80%. Of the 137 prisoners invited to interview, 132 attended the interview and 130 received offers. The five who did not attend the interviews were all Priority and Prolific Offenders, as were all 12 of the graduates who have since returned to prison.

Implications for reform

Once again, Tempus Novo demonstrates the value of cultivating sustained, trusting one-on-one relationships between offender and caseworker. The background and physical location of its staff in prisons provides logistical back up for the approach. Significantly, Tempus Novo offers a model for escaping the stigma of criminal records that keeps so many ex offenders out of work. As with so many effective strategies to reduce reoffending, Tempus Novo's scheme is based on a joined-up, integrated approach to employment.

It also has implications for how these kinds of interventions should be targeted. Tempus Novo only includes offenders who are prepared to do the hard work to improve their circumstances. Arguably, this cohort has /ess need of employment. Of course, as we heard from ex-offenders themselves in the previous chapter, the stigma of a criminal record means employment is an uphill battle for offenders, regardless of attitude.

Importantly, experience has taught service workers that complex offenders tend to reach 'change points' along their journey: brief moments when factors converge to make an offender ready for meaningful change. All too often, they are let down by an unresponsive system which fails to offer the support they need, and the opportunity passes along with the epiphany. Identifying and targeting offenders at 'change points' could represent a viable, effective strategy for intervention.

Furthermore, the success of Tempus Novo is predicated on the trust of employers. For the programme to continue, and even expand, it is necessary that businesses see ex-offenders as reliable and industrious employees. Prioritising offenders who are motivated to change their lives lets Tempus Novo achieve better outcomes for the companies who have put their faith in the programme, maintaining vital partnerships. The programme seems to work slightly less well for the most prolific offenders: it may be this cohort requires its own methodology.

7. Policy recommendations

A new model for criminal justice

Criminal justice is teetering on the verge of meltdown. Successive UK governments, faced with the failure of reforms, have attempted to paper the crisis over: allocating additional funds to probation companies, for example, or for the recruitment of new prison officers. These gestures are not enough to make our system fit for purpose in the modern era.

Today's Britain is neither vindictive nor soft on crime. Society broadly wants to see offenders punished for wrongdoing *and* rehabilitated, so they can rejoin society as productive members. The key challenge, thus, is rewiring justice to handle offenders whose behaviour are driven by complex issues. Continual micro-management from the centre is not the solution. Rather, effective rewiring for the 21st century means deepening integration across agencies within and outside the system, so they can collaborate, communicate, and learn which interventions are appropriate in different contexts. Yet this interconnectedness has little value if not paired with the flexibility to respond, innovate, and adapt lessons at a local level. It also needs to be properly funded.

This report makes the case for a new model for reform based on three key principles:

- Devolving power to shift money upstream
- Integrating services to tackle the root cause of offending
- Deepening relationships at the front line

We believe that taken together as a package, these reforms will end up generating significant cost savings (our modelling suggests the sentencing reforms alone will reduce costs by at least £29 million, potentially rising to £130 million). However, we do not pretend that in the short term they are cost neutral. There is a need for more honesty in the public policy debate: we are going to need to spend more money on our justice system in order to reap longer term dividends, paid for by an increase in central government and locally raised revenue.

Devolving power

Over centralisation is the main obstacle to greater connectivity and innovation in the criminal justice system. When it comes to punishment and rehabilitation, key decisions about funding and priorities are still largely taken in Whitehall.

This has two major consequences. One is that services are delivered in silos, making it impossible to adopt a holistic, 'whole person' or 'whole place' approach. This is especially problematic when addressing complex problems (like prolific offending) that have multiple, interconnected drivers. The second consequence of centralisation is that providers of justice services are accountable in the first instance to Whitehall rather than to their communities, which undermines flexibility, responsiveness and innovation.

Justice devolution will enable PCCs and directly elected mayors to pool devolved budgets across silos, reducing duplication and boosting integration across services. These holistic interventions will be tailored to account for local drivers of demand and prolific offending.

Budgetary discretion will give local authorities a tangible economic incentive to invest in upstream prevention and innovative alternatives to custody, such as electronic monitoring.

Recommendation 1: Give Police and Crime Commissioners and directly elected mayors the opportunity to bid for managing the cost of offenders sentenced to short custodial sentences (under 12 months).

When devolving responsibility for the cost of managing prolific offenders, central government must recognise that any financial benefits will take time to accrue; upfront investment will be required to ensure community alternatives are available. We therefore propose that where PCCs and/ or Mayors show an appetite (and readiness) for devolution, the Ministry of Justice provide a block grant to cover the costs of managing short custodial sentences (sentences under 12 months) over three years. Any grant funds remaining at the end of the period would be kept locally and could be re-invested in the community. Since local areas would have to pay out of that grant to cover the costs of each short custodial sentence issued, they would have a meaningful incentive to find cheaper, more effective alternatives to imprisonment. To give an idea of the numbers involved, we estimate this would imply devolving an average of £21.8 million per police force area.³⁵

Recommendation 2: Give PCCs and directly elected Mayors a role in co-designing the shape of locally commissioned probation services, including payment mechanisms, following the termination of TR contracts in 2020.

One of the lessons of the TR experiment is that when central government procures large national contracts in the criminal justice arena (including those with multiple providers) they are likely to be relatively inflexible and prescriptive – amounting to an imposition of a solution which cannot account for the distinctive local needs of offenders and victims.

The Ministry of Justice has now confirmed that existing TR contracts will be terminated early and re-tendered in 2020. Rather than having a single model - ‘TR2’ - imposed upon them, PCCs and directly elected mayors should be afforded the chance to shape what replaces current contracts within their areas, including, regionally. The PCCs are the ones with the mandate to cut crime. Granting them autonomy to pursue this goal in line with local conditions will inevitably lead to some variation in commissioning arrangements across different areas. The government needs to get comfortable with this idea – current realities demonstrate that uniformity of approach is not working, and it must not be a bar to reform. This must necessarily involve the MoJ relaxing the terms/conditions of CRC contracts, enabling PCCs/mayors to remove some of the perverse financial incentives that currently exist around breach and focus more on outcomes, rather than processes.

Recommendation 3: Incentivise PCCs to work with probation providers to co-design new innovative community sentences and greater flexibility in commissioning electronic monitoring.

³⁵ We have estimated this using the average prison costs for less than 12 month custodial sentences and their accompanying post-license supervision requirements in an average police force area over three years using data from 2017. (See MoJ, Criminal justice statistics quarterly year ending December 2017, Court Outcomes by Police Force Area data tool, 2018.) Volume calculations have been based on an average of 796 short sentences per police force area (50% less than six month and 50% 6-12 month), making up a conservative estimate of £5.37m in prison costs. NAO estimates of £4,500 for a six week stay in prison, have been used for less than 6 month sentences and has been doubled for 6-12 month sentences.

The Ministry of Justice should make clear that PCCs and directly elected Mayors will be put in the driving seat to reform alternatives to custody. This would enable the PCC or Mayor to work closely with probation in designing and investing in sentences which genuinely involve intensive, visible work valued by the local community and supported to succeed by local partners. It would also involve an explicit acknowledgement from central government that PCCs/ Mayors are better placed to co-commission new technological solutions to managing and supervising offenders, than officials based in Whitehall. This could be facilitated by seed funding from government, paid for out of a new Transformation Fund (see below).

Integrating services

As well as devolution and pooling funds, tackling prolific offending requires service integration. Many of the issues that drive offending behaviour exist outside of the criminal justice system, in areas such as substance misuse, housing, mental health, and employment; the levers for change lie outside the system, too. None of these issues can be treated in isolation from the others. This means that, to change offending behaviour, professionals from different sectors must work together to take a 'whole person' or 'whole place' approach to reduce offending.

Recommendation 4: Pilot the creation of locally embedded, multi-agency 'prolific offending teams' in four force areas (similar to the 'YOT' model), overseen by Local Criminal Justice Boards.

This would involve the creation of new multi-agency teams, including at least one representative each from probation, local authority, health services and the local police. The key tasks of the teams would include:

- Assessing prolific offenders' risk factors, protective factors, and needs
- Designing effective community based sentences for prolific low-level offenders, including mechanisms to ensure compliance
- Making sentencing recommendations to magistrates
- Reducing the number of offenders coming into contact with the criminal justice system in the first place

These pilots would be resourced by top-slicing revenue grant funding for probation, NHS, local authorities and the police. (By way of comparison, the average YOT budget across the 137 YOTs in England in 2016/17 was £1.7m, with the money coming from PCCs, local authorities, Ministry of Justice Department of Health).³⁶ As with YOTs, partner agencies would be required to second their staff into the team, meaning that a healthcare worker would sit alongside staff specialising in offending behaviour. Each offender would be assigned a lead caseworker, with other specialist staff brought in as necessary, based on an individual needs assessment. The teams would be free to trial different approaches *within* national minimum standards set by HMI Prisons and Probation and HMICFRS.

Recommendation 5: Pilot a network of 'rehabilitation hubs' for male prolific offenders within four police force areas, based on the 'women's centre' model.

³⁶ MoJ/YJB, Youth Justice annual statistics: 2016 to 2017, additional annexes

Rehabilitation hubs could be attached as a requirement to Community and Suspended Sentence Orders, running in parallel to a more punitive element, such as unpaid work or restorative justice. They could also provide an alternative to formal prosecution for first-time offenders and/ or those at risk of future prolific offending.

The hubs would be specialist community ‘one-stop shops’, providing services for prolific offenders as well as those at risk of involvement with the criminal justice system. Much like a women’s centre, they would provide a focal point for individuals to spend time and receive support, including:

- Counselling and mental health services
- Drug treatment
- Employment skills, literacy and CV support
- Housing assistance

We estimate that the average cost of developing these hubs would be around £2 million per police force area.³⁷ The pilots could be funded through a new ‘Justice Transformation Fund’ (see below) against which PCCs and Mayors would be able to bid.

Deepening relationships

Currently, interactions between offenders and caseworkers are highly time-constrained. For example, in 2017 the HMI Probation inspector of Gwent found that supervision of low-level offenders consisted of one telephone call every six weeks. The high churn of frontline staff within services exacerbates this issue, making it all but impossible for offenders to build a trust-based relationship with their caseworker. Rather, relationships are likely to be transactional in nature, and meetings perfunctory rather than productive.

Much greater consistency is needed in frontline services for these vital relationships to develop. We also need to design institutions that facilitate rather than impede in-person contact between prisoner and staff.

Recommendation 6: Reform post-sentence supervision arrangements so that probation providers are given greater discretion in prioritising resources - and enabling them to ensure more young adult offenders are assigned a dedicated lead professional to manage their resettlement for up to six months following sentence.

The current one-size fits all approach to post-sentence supervision, introduced under TR, lacks the flexibility to meet the varying needs of offenders. A key priority for justice reform should be to build more stable and consistent relationships between front line staff and high-demand offenders.

This is particularly needed for younger offenders, who are over-represented in the criminal justice system and who research has shown are distinct from older adults in terms of both their

³⁷ In the year ending March 2018, there were 81,433 offenders sanctioned for indictable offences who had 15 or more previous convictions. The annual cost of a women’s centre per individual is roughly £1,000, meaning the average cost per police force area (total of 42 areas) to expand such a service for male prolific offenders would be roughly £2,000,000. In larger metropolitan areas, this cost could reflect the total funding needed per local authority or borough.

needs and their outcomes.³⁸ For example, behavioural neuroscience studies have provided strong evidence that the typical adult male brain is not fully formed until at least the mid-20s, meaning young adult males may be more similar to children than adults in psychosocial terms. In addition, many of the support services that are available to young adults involved in crime become unavailable once they turn 18, even though they continue to be at high risk of reoffending. Yet currently, probation providers have limited discretion in meeting the needs of this distinct group.

Giving probation providers a greater say in determining the shape of post-sentence supervision will enable them to prioritise their resources more efficiently and, for example, ensure that more young adult offenders (18-25 year olds) are offered a dedicated lead professional to manage their reintegration back into the community.

Recommendation 7: Publish a new prison and probation workforce strategy, including minimum standards on caseloads and staffing levels.

Changing the behaviour of offenders with chaotic and complex lives requires staff who are skilled in building and maintaining deep relationships. Too often, offender managers are not equipped with the right skills and capabilities. Moreover, in recent years, probation caseloads and prison staffing levels have reached dangerous levels, putting both offenders and staff at risk of harm. At a minimum, the strategy should set out the MoJ's expectations with regard to professional standards, training and maximum caseloads/staffing levels for probation and prison staff. This strategy should be developed in consultation with trade unions and the relevant inspectorates.

Facilitating change at the national level

As in any bureaucracy, criminal justice agencies need to be incentivised to adapt to modern challenges. Yet it is crucial the government introduce the *right* incentives to drive behaviour. As we have seen, centrally imposed targets from above, or simplistic 'payment by results' contracts can backfire, leading organisations to neglect their duty of care in service of targets. Not only does this compromise rehabilitation, it leaves the public less safe, by encouraging agencies to dismiss offences or go after the wrong ones. In light of these poor results, we propose that government seeks to stimulate innovation differently.

Resources

Recommendation 8: Create a new three-year £100 million criminal justice transformation fund, against which PCCs and Directly Elected Mayors could seek capital and revenue funding to support innovation and join up local services locally.

Our proposal would see up to £100 million in funding available annually for three years for the transformation of criminal justice services, with the priority to reduce reoffending. The fund would be agreed as part of the Ministry of Justice's Spending Review Settlement, with bids to be assessed by the National Criminal Justice Board. This would be new, additional investment and would thus represent an increase in Justice spending. However, we view it as an

³⁸ House of Commons Justice Committee: The treatment of young adults in the criminal justice system. Seventh Report of Session 2016-2017

investment for the future, with the savings generated over the longer term as a result of system change (our modelling below suggests annual savings in the region of £29 to £130 million) having the potential to supersede this initial outlay.

Recommendation 9: Expand revenue raising powers to enable PCCs and directly elected mayors to raise a new ‘Crime and Justice’ Precept.

PCCs already raise revenue for policing through the Police Precept, but at present lack a separate mechanism to generate funding for new or improved criminal justice services in their area. The Police Precept is levied as a separate charge on top of existing council tax and is collected through the council tax bill. Local authorities are incentivised by central government to limit increases to the council tax, of which the Precept is a part. Increasing or expanding the Precept to fund services additional to policing would therefore lead to an increase in the Precept. We model that an increase of £50 per Band D Household (less than £1 per week) would raise as much as £4.5m per year for each police force area.³⁹

While we understand that increased taxes is controversial, we believe an expanded Precept offers a way for PCCs to expand criminal justice services at a time when national budgets are likely to be squeezed. It also ensures greater local accountability for how effectively money is spent locally and would give PCCs and Directly Elected Mayors greater leverage over other parts of the criminal justice system.

Sentencing reform

Recommendation 10: Introduce a new national presumption against the use of custodial sentences less than six months, for non-serious offences.

Short custodial sentences are ineffective at reducing offending behaviour. Reforms at the local level to incentivise prevention and diversion are essential to mitigate damage done, but in the medium term they must be matched by sentencing reform at the national level. Judges should be incentivised to reduce the number of people sentenced to custody for less than 6 months for non-serious offences (which make up more than 80% of such sentences). Where intensive community orders exist, magistrates should be encouraged to use them as alternatives. If successful, this could be extended to sentences under 12 months. The impact of this reform - in terms of prison numbers and costs - are modelled below.

Recommendation 11: Overhaul of community sentences to ensure new national minimum standards on swiftness, intensity, enforcement and transparency.

If community sentences are to be used in place of short custodial terms, they cannot constitute a ‘soft option.’ They must be punitive as well as rehabilitative, and they must be robustly enforced.⁴⁰ MoJ should publish new national guidelines specifying minimum standards for community sentences, including:

³⁹ Council Tax: stock of properties 2017

⁴⁰ The type of sentence we have in mind here would be akin to the Intensive Community Order (ICO) being implemented in Greater Manchester. The ICO is an alternative to custody for 18 to 25 year-olds, for offences that would have resulted in sentences of less than 12 months prison time, which combine punitive requirements with support services to address the young person’s needs and help them to rehabilitate. The sentence has a notably lower reoffending rate: 24% for those on an ICO compared to 36.5% to the national equivalent, and provides significant fiscal, social and economic cost benefits.

- **Swiftness** - with a new target to ensure that the National Probation Service allocates cases to the probation provider on the same day as sentencing, and that requirements are commenced no later than a week afterwards (or a fortnight after sentencing for specialist requirements)
- **Intensity** - with minimum hours per week of unpaid work and an assumption that those offenders not in work, education or training would undergo at least five full days of activity per week
- **Enforcement** - with a clear expectation that breach and/ or non-compliance will be met by an escalation of punitive sanctions
- **Transparency** - requiring CRCs to publish data on the nature of community sentences and the type of unpaid work that is carried out, to improve confidence amongst sentencers and the public

Making these changes would entail a small increase in the cost of a standard community sentence (from £4,135⁴¹ to around £5,000⁴²) but these are low when set against the costs of a prison place (£38,042.)⁴³

Recommendation 12: Pilot a new ‘swift and certain’ programme for punishing prolific offenders in the community.

All theft and drugs offenders (with more than six previous convictions) currently serving sentences in the community would be entered onto the programme - amounting to a total of 8,800 offenders per year.⁴⁴

A specific judge would need to be designated for the programme, and be charged with ensuring that hearings were conducted within 24 hours of a breach. Sanctions would include 1-2 days in prison, with punishments escalating in cases where offenders regularly breached. Good behaviour would also be incentivised, with punishment reduced should gaps between breaches increase. Introducing this programme in England and Wales would require enabling changes to be made to primary legislation (the Criminal Justice Act 2003) and to the sentencing guidelines. To begin with, the programme could be piloted by a PCC in a single force area so as to demonstrate workability.

Recommendation 13: Extend the power to undertake regular court reviews for prolific offenders serving short custodial sentences and/or community sentences to all magistrates’ courts - by extending section 178 of the Criminal Justice Act 2003.

Some magistrates already technically have the power to review an offender’s progress on a community sentence, yet such reviews are rarely implemented or recommended as part of a Pre Sentence Report. Government should publish guidance and if necessary amend secondary legislation 83 (S178 of the Criminal Justice Act 2003) to ensure these powers are available to all magistrates and that those who already have those powers feel equipped to use them.

⁴¹ Based on former probation trust figures, MoJ, Probation Trust Unit Costs Financial Year 2011–12 (revised), 2012

⁴² ICO builds on the successful pilot of the Intensive Alternative to Custody Pilots - The estimated weighted average cost of an IAC order per offender was around £5,000 a year

⁴³ MoJ, Costs per prison place and cost per prisoner 2016 to 2017 summary, average cost per place per year, 2017

⁴⁴ Calculation: 22,165 offenders were handed community sentences for drug and theft offences in 2017 in England and Wales (Criminal Justice System statistics quarterly: Sentencing Tool), and 39.6% of offenders given a community sentence in 2018 had 7 or more previous convictions (Table 6.1 in Criminal justice system statistics quarterly: March 2018)

Recommendation 14: Amend the Homelessness Code of Guidance for Local Authorities to explicitly designate as ‘vulnerable’ any individual who is homeless upon completion of a custodial sentence.

For offenders who previously stayed in rented accommodation, homelessness is a common side effect of short custodial sentences. Homelessness is also a key driver of offending behaviour. It is disingenuous and counterproductive to allow local authorities to deem someone leaving custody as having made themselves ‘deliberately homeless,’ and thus excluded from the remit of the Homelessness Act. The government should amend national legislation to end this practice, which serves the interests of neither offender nor community.

Modelling the impact of sentencing reform

In order to measure the impact of the reforms proposed above, notably a new presumption against short custodial sentences, we have modelled the effect this reform could have on both the prison population and the community probation caseload.⁴⁵ It is important to note that this has been predicated on the assumption that probation as it is currently is capable of delivering the reforms we have laid out above.

Our model has examined the potential impact of a presumption against the use of short custodial sentences, substituting instead an ‘intensive’ community sentence. We have modelled the impact for two scenarios:

1. A presumption against short custodial sentences of less than 6 months; and,
2. A presumption against short custodial sentences of less than 12 months

For both scenarios, we have made the following assumptions:

- A. All prison sentences destined to be given custodial sentences of less than 6 months, and less than 12 months, are converted to a new, intensive community sentence⁴⁶
- B. Breaches of the new order are generally handled without recourse to custody. However a further re-offence can lead to custody (see below)

In the simulation we applied two exceptions to the presumption:

- A. Those committing a further offence while under supervision would go to prison (assuming the offence met the custody threshold)
- B. Those whose offending history had flagged them as being high or very high risk of harm would not be diverted from custody

Assumptions about the new sentence

The analysis assumed that the new ‘intensive’ community sentence included in the model would be for a minimum of 12 months, with a variable added component of up to a further 12 months depending on the sentence i.e. a range between 12 and 24 months. This is compared to the current standard length of community sentence (included in the baseline scenario) of 12-24 months for summary offences, and 28-36 months for indictable offences.

The model did not simulate the activities that would form such sentences, only their length. This allowed for an estimate of the change to the probation service’s caseload. The model also looked at the impact on the probation service’s caseload for the supervision of offenders on

⁴⁵ Please see Annex I for an overview of the simulation methodology

post-release supervision. The reduction in post-release supervision as a result of diversion to community sentences would compensate in part for the increase in caseload as a result of the increase in community sentences handed out.

It should be noted that the length of community sentences does not directly affect reductions in prison places, and indirect effects, such as those relating to further offending under supervision for example, are comparatively small.

Conclusions

The analysis estimated that replacing short custodial sentences of less than 6 months and less than 12 months, with 'intensive' community sentences would have a significant impact on the prison population. The model estimated a one-off reduction of 4,830 in the prison population (approximately 5%) for scenario 1 and 8,825 (over 10%) for scenario 2, from its current baseline.

Though the probation caseload would increase as a result of these proposed measures, there are clear cost and recidivism benefits to rehabilitating offenders in the community as opposed to in custody, particularly in light of the findings cited earlier in the report regarding the lack of efficacy of short custodial sentences on offending outcomes. Furthermore, the added resources needed by the probation service would be more than offset by the reductions in the prison population, as well as mitigated by the reduction in offenders being managed post-license.

Converting the fall in prison numbers and the impact of implementing an intensive community alternative into pounds and pence suggests that these changes would cost significantly less per year than the current system, freeing up:

- £29 million for a presumption of against custodial sentences of less than six months
- £130 million for a presumption against custodial sentences of less than 12 months

A full cost benefit breakdown is contained in Annex II, and we explore the further impacts of this reform on demands across the system below.

Impact of sentencing

The analysis estimated the reduction in the number of custodial sentences handed out, each of which would have resulted in a post-license supervision requirement to the probation services.

	Scenario 1 (less than 6 months)	Scenario 2 (less than 12 months)
Men	~37,000	~46,000
Women	~5,500	~7,000

The custodial sentences given for re-offending whilst on supervision (~4,000) would be targeted towards high or very high risk offenders

Impact on prison population and probation caseloads

The analysis estimated that the impact of implementing new 'intensive' community sentences as an alternative to short custodial sentences would lead to a one-off reduction of the existing prison populations which would be sustained longer-term:

	Scenario 1 (less than 6 months)	Scenario 2 (less than 12 months)
Men	- 4,300 ± 800	- 7,900 ± 1200
Women	- 530 ± 270	- 925 ± 340

The results also predicted an increase in caseloads for the probation service as a result of the changes. Specifically, it would likely lead to the following caseload increases:

	Scenario 1 (less than 6 months)	Scenario 2 (less than 12 months)
Men	+ 14,000 cases	+ 32,000 cases
Women	+ 1,750 cases	+ 3,700 cases

Annex I

Simulations were carried out using the August 2018 version of the simulation engine. These assessments could change as the underlying algorithms and assumptions of the simulation engine are kept under review. An overview of the methodology⁴⁶ is as follows:

- The results are averaged over 24 simulation runs for each case considered
- The size of the virtual population was set to 200,000
- Male offenders and female offenders are simulated separately (given the widely different gender risk profile)

Annex II

Estimated costs and savings for implementing a presumption against short custodial sentences have been modelled for both scenario 1 (presumption against short custodial sentences of less than 6 months) and scenario 2 (presumption against short custodial sentences of less than 12 months.) In both scenarios, offenders would be instead sentenced to a community order. We recommend a new intensive community order and have estimated the cost of implementing this new system, as well as if existing standard community orders were provided instead.

ADDITIONAL COSTS/ SAVINGS	SCENARIO 1: <6 MONTHS		SCENARIO 2: <12 MONTHS	
IMPACT OF MODELLING	MALES	FEMALE	MALES	FEMALE
Reduction in prison population	4,300	530	7,900	925
Reduction in custodial sentences	37,000	5,500	46,000	7,000
Increase in probation caseload	14,000	1,750	32,000	3,700
ESTIMATED COST SAVINGS (see unit costs below)				
Reduction in prison place	£177,319,100	£23,793,290	£325,772,300	£41,526,025
Reduction in cost of post-license supervision	£88,060,000	£13,090,000	£109,480,000	£16,660,000
Total	£265,379,100	£36,883,290	£435,252,300	£58,186,025
ESTIMATED ADDITIONAL COSTS OF ALTERNATIVE SENTENCING (see unit costs below)				
Cost of diverting to new intensive CO	£185,000,000	£27,500,000	£230,000,000	£35,000,000
Cost of diverting to standard CO/SSO	£152,995,000	£22,742,500	£190,210,000	£28,945,000
ESTIMATED ADDITIONAL COSTS OF TRANSFORMATION/IMPLEMENTATION				
Approximately 20% of cost savings to implement the new presumption	£53,075,820	£7,376,658	£87,050,460	£11,637,205
TOTAL SAVINGS (by gender and total)				

⁴⁶ Further detail about the methodology can be found at www.justice-episteme.com

Savings made on implementing presumption and replacing with a new intensive CO	£27,303,280	£2,006,632	£118,201,840	£11,548,820
Savings made on implementing presumption and replacing with standard existing CO	£59,308,280	£6,764,132	£157,991,840	£17,603,820
Total savings for implementing presumption with new intensive CO (male & female)	£29,309,912		£129,750,660	
Total savings for implementing presumption with standard CO (male and female)	£66,072,412		£175,595,660	

UNIT COSTS OF SENTENCES USED FOR ESTIMATES	
Average cost per local prison place (male/female) ⁴⁷	£41,237/ £44,893
Average cost per existing CO/SSO ⁴⁸	£4,135
Average cost per post-license supervision ⁴⁹	£2,380
Average cost of new intensive CO ⁵⁰	£5,000

⁴⁷ Costs per local prison place were used for this estimate, MoJ, Prison performance statistics 2016 to 2017, Costs per prison place and cost per prisoner by individual prison establishment 2015 to 2016: restated tables, 2017

⁴⁸ The average cost of delivering a community order/ suspended sentence order from the former probation trust areas was used here, from MoJ, Probation Trust Unit Costs Financial Year 2011–12 (revised), 2012

⁴⁹ The average cost of delivering post license supervision from the former probation trust areas was used here, from MoJ, Probation Trust Unit Costs Financial Year 2011–12 (revised), 2012

⁵⁰ The cost of the MoJ Intensive Alternatives to Custody Pilots, the precursor to the existing Intensive Community Order being delivered in Greater Manchester, was used for this estimate, from MoJ, Evaluation of the Intensive Alternatives to Custody pilots, 2012

